

# Indiana Election Commission Minutes August 26, 2004

**Members Present:** Brian L. Burdick, Chairman of the Indiana Election Commission (the Commission); S. Anthony Long, Vice Chairman of the Commission; Thomas A. John, Commission member; Ms. Sandi Huddleston, Acting Chairman and proxy for Mr. Burdick for part of the meeting; Ms. Mary Titsworth Chandler, proxy for Mr. Morgan for part of the meeting; Mr. Chris Becker, proxy for Mr. Morgan for part of the meeting.

**Members Absent:** Butch Morgan.

**Staff Attending:** J. Bradley King, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Kristi Robertson, Co-Director of the Election Division; Dale Simmons, Co-General Counsel of the Election Division, Pam Potesta, Campaign Finance Co-Director of the Election Division, Michelle Thompson, Campaign Finance Co-Director of the Election Division, Michelle Brzycki, Special Projects Coordinator of the Election Division, and Lori Hershberger, Special Projects Coordinator of the Election Division.

**Also Attending:** The Honorable Marsha Abell, Circuit Court Clerk of Vanderburgh County; Mr. Tony Albrecht; Mr. Donald Bell; Mr. Lyman Tex Black; Mr. Marc Carmichael; Mr. Larry Chubb; Ms. Brenda Dant; The Honorable Jeff Espich, Indiana State Representative; Ms. Emily Everitt; Ms. B. J. Farrell; Mr. Mark Foster; The Honorable Patricia French, Henry County Circuit Court Clerk; Mr. Bernard Glass; Mr. John S. Groh, Election Systems & Software (ES&S); Ms. Sharon Hannasch; Ms. Jean Harmon; Ms. Carla Hayden; Ms. Bethany M. Hayes; Ms. Donna Heinz; Mr. Phil Hoy; The Honorable Jill Jackson, Johnson County Circuit Court Clerk; Mr. Jim Leich; The Honorable Sue Anne Lower, Wayne County Circuit Court Clerk; Mr. Toby McClamroch; Mr. Robb McGinnis, ES&S; Mr. Andy Miller; Ms. Nancy Pappas; Ms. Kim Reed; Mr. Randy Shields; Mr. James Wenning; and Mr. Ed Yanos.

## **1. Call to Order; Compliance with Open Door Law; Introduction of New Members and Proxies:**

The Chair called the August 26, 2004 meeting of the Commission to order at 1:20 p.m. at the Indiana Government Center South, Conference Center, Training Center Room 5, 302 West Washington Street, Indianapolis, Indiana. He noted that proper notice of the meeting had been given as required by the Open Door Law, and that the agenda for this meeting had been posted. A copy of the meeting notice and agenda is incorporated by reference in these minutes. *[Copies of all documents incorporated by reference are available for public inspection and copying at the Election Division office.]*

The Chair noted that three Commission members were present, and stated that the agenda for this meeting would be revised to accommodate Mr. Long, whom the Chair understood was currently looking for parking to be able to attend the meeting.

The chair welcomed Mr. John as a new member of the Commission. Mr. John's oath of office, as filed with the Election Division, is incorporated by reference in these minutes.

The Chair noted that Mr. Morgan was unable to attend the Commission's meeting, and had designated Ms. Mary Chandler as his proxy in a document filed with the Election Division. A copy of this proxy, as filed with the Election Division, is incorporated by reference in these

minutes. The Chair welcomed Ms. Chandler, and thanked her for her participation in this meeting.

The Chair recognized Ms. Robertson, who stated that Mr. Chris Becker had also been designated by Mr. Morgan as his proxy, and would take over for Ms. Chandler later during the meeting. A copy of this proxy, as filed with the Election Division, is incorporated by reference in these minutes. The Chair welcomed Mr. Becker, and thanked him for his participation in this meeting.

The Chair noted that he had designated Ms. Sandi Huddleston as his proxy of record, and that Ms. Huddleston would be acting as Chair and as a Commission member at certain points during this meeting. A copy of this proxy, as filed with the Election Division, is incorporated by reference in these minutes.

## **2. Orders Approving Forms:**

The Chair recognized Ms. Robertson who referred Commission members to a letter dated July 16, 2004 from Barbara Roll, the voter registration deputy in the Wayne County Circuit Court Clerk's office. A copy of the letter is incorporated by reference in these minutes. She noted that the letter requested a revision for the VRG-13a and VRG-13b registration acknowledgment notice forms for Wayne County only. Ms. Robertson said that the VRG-13a and 13b forms are usually pre-printed by the counties on the county's system, and then sent to a voter acknowledging that a registration application has been approved. She stated that Wayne County's request is to rearrange the way in which the "registration number" is printed on these forms since voters sometimes are confused by what the "registration number" refers to. Ms. Robertson indicated that the "registration number" is the number assigned to that registration record by the county voter registration office.

Ms. Robertson then referred the Commission to Order 2004-49, which concerns several current forms which have already been revised, and would therefore be approved retroactively. She noted that the Election Division had determined that there were several form revisions which were needed by counties or voters after the last Commission meeting several months ago, and which were distributed before today's Commission meeting. She then reviewed the forms included in Order 2004-49.

Ms. Robertson noted that the ABS-3 is the write-in ballot provided as a "backup ballot" to certain military and overseas voters to permit them to vote for statewide offices and on the judicial retention and state constitutional amendment questions. She remarked that the regular absentee ballot is also sent to these voters, and the ABS-3 is only counted if the regular ballot is not received back in time by the county. She indicated that this revision to the ABS-3 form was just to include the statewide offices, judicial retention question, and state constitutional amendments questions which would be on the general election ballot in 2004.

Ms. Robertson stated that the ABS-11 and ABS-13 are forms designed to permit certain military voters to register later in the process under a law that provides for a later registration deadline than other voters. She indicated that these forms had been revised simply to update the deadlines that would apply to the 2004 general election.

Ms. Robertson indicated that the CAN-3 is the form used as the declaration of intent to be a write-in candidate. She remarked that an amendment to state law was enacted this year and took effect on March 16, 2004, which moved the write-in deadline up substantially. She noted that the deadline had been in September 2004, but under this legislation was moved forward to noon, July 6, 2004, to coordinate with other candidate filing deadlines. She said that as a result, this form needed to be revised before this Commission meeting.

Ms. Robertson noted that the CAN-11 form is used by the county election boards to certify the results of the May presidential preference primary to the Election Division, and was revised to include the actual presidential primary candidates that were on the May 2004 presidential primary ballot.

Ms. Robertson stated that the CAN-12 form is used by the election division to certify the results of the presidential primary to the major political party state committees.

Ms. Robertson said that the CAN-22 form also had to be updated to reflect legislative changes in certain candidate filing deadlines. She noted that the CAN-22 form concerns Libertarian Party candidates, who are nominated by convention, rather than at the primary.

Ms. Robertson indicated that the CAN-23 form was revised to reflect a change in state law concerning the deadline for candidate certifications. She said that the CAN-23 form concerns the certification of the nomination of Democratic, Libertarian, and Republican Party state convention nominees.

Ms. Robertson remarked that the IEC-1 form is used by counties who wish to order presidential and statewide paper ballots from the Election Division. She noted that the IEC-1 was updated for the 2004 election.

Ms. Robertson noted that the CEB-23 and CEB-24 are lengthy forms sent by the county election boards to the election division designating the primary election nominees. She added that these forms were updated to reflect the candidates nominated at the May 2004 primary election.

Ms. Robertson then asked Ms. Brzycki, voter registration coordinator for the election division to address the voter registration forms revised under Order 2004-50. The Chair recognized Ms. Brzycki for this purpose.

Ms. Brzycki stated that three voter registration forms were included in this order. She noted that VRG-6 is a version of the voter registration form used at "full service" voter registration agencies, such as the Bureau of Motor Vehicles (BMV). She indicated that in the past, under the BMV's old system, the BMV would take VRG-6 form, which was on one page, and would run the form through a machine that would print just the answers to the questions as responded to by the voter. She said that the former version of this form was pre-perforated, and that the form would then be torn apart, with the applicant being handed part of this form as the applicant's receipt, and with the BMV forwarding the application part of the voter registration form on to the appropriate county voter registration office.

Ms. Brzycki indicated that the BMV's new system will print the entire voter registration form with the applicant's answers on the form, all at once. As a result, the BMV staff will put a blank piece of paper in, and get a printed, completed registration form out. She noted that the BMV was uncomfortable having scissors or other sharp items present on the BMV's counters, since the BMV is required to reject some applicants for a driver's license, and has some irate customers as a result. Ms. Brzycki said that since the form used in the new system will not be pre-perforated, BMV did not wish to cut the single page voter registration form in two at the counter to provide the applicant with the voter registration receipt. Ms. Brzycki indicated that, as a compromise, the VRG-6 form used at the BMV will consist of two pieces of paper: the voter's receipt would be printed on an entire sheet, and handed to the voter; the voter registration application would be printed on a separate entire sheet of paper, and then forwarded on to the county by the BMV. She noted that the county voter registration office could then either retain the voter registration application on a full sheet of paper, or cut the paper to fit within the cabinet size used in that county to retain voter registration applications.

Ms. Brzycki noted that Order 2004-50 would be grandfathering use of the last previous version of the VRG-6 form used at the BMV, which complies with the Help America Vote Act (HAVA), since BMV will be transitioning in its license branches from its old system to its new system over the course of one year. She said that over this period, two versions of the VRG-6 would be in use at the license branches, at that grandfathering the old form was required as a result.

Ms. Brzycki remarked that Order 2004-50 authorized use of the revised VRG-6 form retroactively since the new form had been used in a license branch for about one month.

Ms. Brzycki indicated that the VRG-7p is a Spanish language voter registration form, which was updated to be HAVA compliant by including the required questions concerning U.S. citizenship and age. She noted that Order 2004-50 would not grandfather the use of previous versions of the VRG-7p form since those forms do not contain the required questions.

Ms. Brzycki noted that the VRG-21 is the affidavit filed by county voter registration officers concerning voter list maintenance. She indicated that this form has been revised to reflect a change in state law, which requires that when a county voter registration office completes a voter list maintenance program, this form must be filed with the election division. She noted that under former law, this form was instead required to be filed with the county auditor. She remarked that to reflect this change in state law, the use of any previous versions of the VRG-21 form were not being grandfathered.

The Chair then recognized Ms. Robertson to discuss Order 2004-51. She noted that the forms listed in this Order are current forms which would be revised effective upon adoption of the Order by the Commission, and not retroactively.

Ms. Robertson said that form IEC-5a is the application for media poll watcher credentials. She stated that members of the media who wish to be watchers within a polling place must apply to the election division. She noted that this form's language is essentially unchanged, but that the form had been redesigned to make the form available in an electronic version.

Ms. Robertson indicated that the IEC-11 is the application for voting system certification, and had been revised for clarity and to recognize changes made in state law. She remarked that this form is used by a voting system vendor to apply for Commission certification of a new voting system, or an upgrade for a currently certified voting system. She noted that there were significant changes to this form, primarily to point out provisions that are already in law, such as the validity of the application for one year, and statutory requirements that have been discussed in previous Commission meetings. She added that the application form made it clearer which voting system version number was subject to the application. Ms. Robertson called the Commission's attention to one change in the oath or affirmation language on the reverse side of the application form. She noted that this revision reflected a change in state law requiring that a voting system vendor to swear under the penalties for perjury, that the information set forth in the application, or filed as a part of this application, is true to the best of the vendor's knowledge and belief. She said that the election division had added a few of the elements set forth in state law to the list of required components of the application.

Ms. Robertson stated that form CEB-2 is an application for assignment to a polling place. She indicated that if a person with disabilities had an inaccessible polling place, state law permits the person to apply to be assigned to an accessible polling place. She noted that the form had been revised to recognize the requirement in state law that this form be filed with the county election board or circuit court clerk.

Ms. Robertson remarked that form CEB-12 is used by county election boards to certify to the election division the votes cast for and against public questions at the state level, such as a judicial retention question or ratification of a state constitutional amendment. She noted that the election division had been unable to revise this form until after the deadline for judicial retention filings and the passage of legislation setting forth the ballot language and order for these constitutional amendments for the 2004 general election.

Ms. Robertson said that the CEB-17, CEB-18, and CEB-19 forms were certificates of election issued after a general election for township offices. She noted that ordinarily revisions in these forms would not be required for 2004, but that in Marion County several township officials would be on the 2004 general election ballot. She said that as a result, these forms were updated to reflect the 2004 general election.

Ms. Robertson called the Commission's attention to the PRO-2, the provisional ballot security envelope. She noted that the May 2004 primary was the first time that the provisional ballot procedure had been used in Indiana, and that there had been some confusion with the procedure. Ms. Robertson said that basically when a provisional ballot is issued for a voter, an affidavit must be completed for the provisional ballot to be counted. She indicated that this affidavit is separate from the envelope that the provisional ballot is placed in. She remarked that in some counties, poll workers were confused and did not fill out the required affidavit. She said she believed that some legitimate voters who cast a provisional ballot did not have their ballot counted because the affidavit was not completed.

Ms. Robertson noted that Order 2004-51 does grandfather the use of the previous version of the PRO-2 security envelope, since some counties have already ordered and printed the previous version. She added that the election division had developed a new version of the PRO-2 envelope, which contained the same language on the front of the PRO-2 envelope, but would include the appropriate challenge affidavit forms on the back of the PRO-2 envelope. She noted that this language would include both the affidavit executed by the person making the challenge and the affidavit completed by the challenged voter. She hoped that poll workers would see this affidavit language on the back of the PRO-2 envelope and understand that the affidavits need to be filled out before the poll workers place the provisional ballot in the envelope. She said that she hoped this revision to the form would reduce this confusion.

Mr. King added that he did review the proposed form revisions with Ms. Robertson, and would also recommend that the Commission approve Orders 2004-49, 50, and 51, along with granting the permission requested by Wayne County to use an alternative version of the VRG-13a and VRG-13b forms. He noted that the proposed revision to the PRO-2 envelope would be an option for counties, and could be printed in any size that the county felt was appropriate. He added that the language set forth on the existing PRE-4 form, which is the affidavit form executed by a person making a challenge, and the affidavit executed in response to the challenge, is unchanged as it appears on the PRO-2 envelope, except for revisions to instructions that recognize that the affidavit will be printed on the face of the envelope.

In response to a question from the Chair, Mr. King stated that each circuit court clerk is responsible for training regarding the use of provisional ballots. The Chair asked if the election division had provided training regarding provisional ballots to the circuit court clerks at the annual county election administrator's conference, and expressed his concern that the use of provisional ballot would be a big issue at the upcoming general election. He added that he also had seen provisional ballots turned in with affidavits not being attached, so that the vote did not count. The chair asked if the co-directors could send out a letter to the circuit court clerks to remind them of the importance of training concerning provisional ballots, and emphasizing how this form revision could prevent what he perceived as a potentially growing problem concerning

the use of provisional ballots. The co-directors agreed to do so. The chair emphasized that he wanted to make certain that people's votes were counted if they should be counted.

The Chair moved, seconded by Mr. John, to approve Orders 2004-49, 2004-50, and 2004-51 as submitted. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Ms. Chandler, and Mr. John) and no Commission member voting "no," the Orders were adopted. Copies of Orders 2004-49, 2004-50, and 2004-51 are incorporated by reference in these minutes.

The Chair moved, seconded by Mr. John, to: (1) approve the revision to forms VRG-13a and VRG-13b for and requested by Wayne County; (2) that the election division prepare an order to that effect; and (3) that the Commission members authorize the use of signature stamps by the election division to sign the order on their behalf. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Ms. Chandler, and Mr. John) and no Commission member voting "no," the motion was adopted.

### **3. Litigation Report:**

The Chair recognized Mr. Simmons for the litigation report. Mr. Simmons indicated that he had four cases that were outstanding against the Commission that were included in his report. He noted that this meeting will be the last time that he will report on two of these cases.

Mr. Simmons called the attention of the Commission to *Toth v. Rokita*, which was filed in 2001 to compel Indiana counties to transition from their existing lever and punch card voting systems to a more modern voting system. He remarked that this issue was impacted by the enactment of the Help America Vote Act (HAVA) in 2002, which required this transition under federal law.

Mr. Simmons stated that because of HAVA, the Attorney General was able reach an amicable settlement of this case, and this case has now been dismissed. He noted that a copy of the order of dismissal had been provided to Commission members. The order of dismissal is incorporated by reference in these minutes.

Mr. Simmons then referred the Commission to *Lawyers Educational and Advocacy Forum v. Abell*. He indicated that this case was a challenge to Indiana's disclaimer statute, which requires campaign advertising to contain a tag line stating that the advertising was paid for by the candidate's committee and to indicate in some instances whether the advertising was authorized. He noted that the disclaimer law had been challenged in this case on the basis that although use of the disclaimer could be required for candidates and committees, that it was unlawful as a violation of the First Amendment to require the use of disclaimers by individuals.

Mr. Simmons noted that after extensive litigation, in both Indiana and federal courts, the state prevailed in the Seventh Circuit of the U.S. Court of Appeals. He added that this victory did not end the case since the plaintiff in this case had then petitioned the U.S. Supreme Court for a writ of certiorari. Mr. Simmons stated that the U.S. Supreme Court had recently denied this petition, and so this case was now concluded as well.

Mr. Simmons indicated that the last two cases included in his report present the same two issues. He remarked that *Majors v. Election Commission* and *Williamson v. Election Commission* both involve claims by Libertarian candidates who are challenging the Commission's action to impose penalties against these candidates under the Indiana campaign finance laws when these candidates have neither raised nor expended any money. Mr. Simmons stated that these individuals claim that the definition of "candidate" in the Indiana election code does not require them to file campaign finance reports. He noted that, historically, the Commission has always taken the position that the campaign finance law does require the

filing of campaign finance reports in that case, and that he, as co-general counsel, supports that opinion.

Mr. Simmons stated that there has been a motion to dismiss pending in the *Majors* case for some time now, but there is no further action to report on that motion.

Mr. Simmons added that the *Williamson* case was both an administrative appeal and a federal civil rights case. He noted that the administrative appeal portion of that case was dismissed for failure to file a record in a timely manner, and that the federal claims are pending, but there is no further action to report on those claims.

Commission members thanked Mr. Simmons for his report.

#### **4. Campaign Finance Referrals to Attorney General:**

The Chair recognized Ms. Potesta and Ms. Thompson to report concerning referral of campaign finance matters to the Attorney General. Ms. Thompson noted that Commission members had received a list of committees which the election division was turning over to the Attorney General for the collection of campaign finance civil penalties previously imposed by the Commission. A copy of this list is incorporated by reference in these minutes. Commission members thanked Ms. Thompson for this report.

#### **5. Reports Concerning the May 4, 2004 Primary:**

The Chair recognized Mr. King, who noted that the Official Canvass of the May 4, 2004 primary election has been completed and certified by the Co-Directors. He indicated that this canvass sets forth the final vote totals cast at the Democratic Party and Republican Party primaries for the nomination of statewide candidates, state legislative candidates, and judicial candidates. A copy of this canvass is included by reference in these minutes.

Mr. King added that the canvass also documents that three state level candidates who were nominated at the primary election have since withdrawn. He remarked that while the canvass indicates that no contests were filed with the election division, a recount was filed with the election division concerning the Republican Party's nomination for Indiana State Senate District 36. He noted that the co-directors, in their capacity as counsel for the Indiana State Recount Commission, participated in this recount. Mr. King stated that the recount has been completed, and the results of the recount are reflected in this canvass. He indicated that no formal action is required by the Commission concerning this canvass, which is provided for the Commission's information.

Mr. King also noted a Correction to the Certification of Candidates for the May 4, 2004 primary was certified by the co-directors to reflect the Commission's action at its March 10, 2004 meeting determining that Dwight D. (Ike) Wilkerson as not qualified to appear on the ballot as a candidate for the Republican Party's nomination for U.S. Senate. A copy of this Correction is included by reference in these minutes.

Mr. King noted that Commission members had been provided with a copy of the English language and Spanish language versions of the Indiana Voter's Bill of Rights. He said that these posters had been distributed for posting at the polling places used for the May 4, 2004 primary. Copies of these documents are included by reference in these minutes.

#### **6. Voting System Certifications: Report by Co-Directors**

The Chair recognized Mr. King, who noted that the Commission had received a memo from the co-directors, dated August 24, 2004, which sets for the information regarding the status of all voting system approval applications currently pending before the Commission. A copy of this memo is included by reference in these minutes.

Mr. King also noted that the Commission had received the following documents concerning voting system certifications: (1) a document provided by the federal Election Assistance Commission entitled "NASED Qualified Voting Systems", dated August 12, 2004; (2) a letter dated March 15, 2004, from the co-directors to Ms. Sandy Green of Hart InterCivic, Inc, reporting the Commission's action at its March 10, 2004 meeting to approve the application for Hart InterCivic direct record electronic voting system Version 3.2 software upgrades BOSS 3.4.0; Tally 3.2; Ballot Now 2.1.10; Rally 1.2.0; JBC 2.0.13, eSlate 2.0.13; SERVO 2.0.10; (3) letters dated April 8, 2004 and July 26, 2004 from DSI Technology Escrow Services (DSI) concerning the escrow of the Hart InterCivic firmware and software; (4) a letter dated May 24, 2004 from DSI concerning the escrow of the listed firmware and software products deposited with DSI by Diebold Election Systems, Inc.; and (5) a document dated June 17, 2004 concerning the designation of SysTest Labs as an independent testing authority. Copies of these documents are included by reference in these minutes.

#### **6. A. MicroVote direct record electronic Infinity voting panel firmware upgrade (Version 2.13)**

The Chair recognized Mr. King noted that this application had been before the Commission at a previous meeting.

Mr. King stated that MicroVote has not yet provided the proof of escrow required by state law, and that MicroVote had not yet provided the written statement requested by the Commission concerning any testing of this firmware upgrade that might be going on at CIBER, another independent testing authority.

Mr. King indicated that the following documents concerning this application have been provided to Commission members: (1) a letter dated March 22, 2004 and a note dated March 23, 2004 from MicroVote to the co-directors; (2) a letter dated March 24, 2004 to Co-Director King from MicroVote referencing a letter also dated March 24, 2004 from Ms. Dawn L. Bates of Wyle Laboratories (Wyle) to Mr. Brian Hancock of the Federal Election Commission (FEC); (3) an email dated March 26, 2004 from MicroVote to the co-directors; (4) a letter dated April 2, 2004 from MicroVote to the co-directors, referencing a letter dated April 1, 2004 from Ms. Bates of Wyle to Mr. Hancock of the FEC; (5) faxes dated April 14 and 23, 2004 from Mr. Hancock, now with the federal Election Assistance Commission, to Co-Director King, and referencing letters dated March 24, 2004 and April 16, 2004 from Ms. Bates of Wyle to Mr. Hancock; and (6) an email dated August 25, 2004 from Mr. Shamo to the co-directors. Copies of these documents are included by reference in these minutes.

Mr. King added that the co-directors were recommending that the Commission require MicroVote to provide the Commission with a copy of the final test reports from Wyle Laboratories, which had issued a report concerning the version 2.13 upgrade. He remarked that this recommendation had been suggested by Mr. Hancock of the federal Election Assistance Commission staff.

Mr. King concluded by noting that this application was still pending since MicroVote had not provided the required documentation regarding escrow and testing at CIBER, but that MicroVote has indicated that it is continuing its efforts to meet these requirements.



**6. B. Voting Technologies International direct record electronic VOTWare software upgrade (Version 3.6.10)**

The Chair recognized Ms. Robertson who stated that Voting Technologies International (VTI) this application was for a software upgrade to a currently certified direct record electronic voting system. She noted that this system has been demonstrated to the Commission, and VTI has submitted the required fee and application. She added that the only item the election division was still waiting for was a report from an independent testing authority (ITA) certifying that this software upgrade meets the 2002 FEC standards.

Ms. Robertson remarked that Indiana law had adopted the 2002 FEC standards as required even for approval of an upgrade to an existing voting system. She said that Mr. King had spoken to Mr. Parrish of VTI concerning this application, and that Mr. Parrish had indicated that VTI did not expect to receive this upgrade to receive certification to 2002 FEC standards until after 2004. She concluded by stating that it was the recommendation of the Co-Directors to table this application until VTI receives the required ITA report.

**6. C. Sierra Election Systems optical scan ballot marking device**

The Chair recognized Mr. King who stated that Sierra Election Systems, LLC (Sierra) had previously submitted an application for approval of an optical scan ballot marking device. He noted that this system would be designed to respond to verbal prompts made by a voter, so that a blind or visually impaired individual would be able to use an optical scan ballot system to cast their vote.

Mr. King said that the Sierra system has not been demonstrated to the Commission. He added that according to a voice mail message he had received from Mr. Richard Vogel of Sierra, the system was currently undergoing testing at an independent testing authority, but that the ITA report was not yet complete. He added that there was one correction to be made to the co-directors memo concerning Sierra's application. Mr. King stated that, according to Mr. Vogel, Sierra Election Systems, LLC, will have an exclusive distribution contract with Election Systems and Software for this system, but that Sierra has not been acquired by ES&S.

Mr. King stated that the co-directors recommended that this application be tabled by the Commission pending the receipt of the required ITA report.

**6. D. UniLect Corporation "The Patriot" direct recording electronic voting system.**

The Chair recognized Ms. Robertson who stated that UniLect has applied for approval of a new direct recording electronic voting system. She noted that UniLect had submitted the required application and fee, but has not yet submitted the documentation that is required to accompany the application. She added that UniLect has not yet escrowed the required material, nor demonstrated the system to the Commission.

Ms. Robertson said that UniLect had also not yet submitted a report from an independent testing authority, and so the co-directors are recommending that this application be tabled at this time. She added that the co-directors had received an email from UniLect, indicating that the company did wish to pursue approval of this application.

**6. E. Avante International Technology, Inc. Vote-Trakker direct record electronic voting system, version 4.76.**

The Chair recognized Mr. King, who stated that Avante International Technology, Inc. (Avante) had applied for approval of a new direct recording electronic voting system, the Vote-Trakker. A letter from Avante dated April 26, 2004, but filed with the Election Division on August 9, 2004, and Avante's application for this approval, also filed on August 9, 2004, are included by reference in these minutes.

Mr. King noted that this system has not yet been demonstrated to the Commission. He added that he had spoken with Mr. Tallone, the individual who had completed Avante's application. Mr. King reported that Mr. Tallone acknowledged that Avante had not yet completed the required escrow of system software. Mr. King added that Mr. Tallone confirmed that the information set forth in the co-directors report regarding this voting system was correct, in that the Wyle Laboratories independent testing authority report indicated that version 4.76 was in compliance with 1990 FEC Standards, but not 2002 FEC Standards.

Mr. King said that the co-directors recommended that the Avante application be tabled pending a demonstration of this system to the Commission; submission of proof of escrow; and submission of letters from an ITA demonstrating that the system has been tested by an independent testing authority and found to be compliant with 2002 FEC Standards.

Mr. King added that although the memo from the co-directors recommended that several of these voting system applications be tabled by the Commission, which they felt was entirely proper, the co-directors did note that as of March 16, 2004, Indiana Code 3-11-15 has been amended to specifically prohibit the Commission from taking action on a voting system application until all of the required components of that application have been submitted.

The chair indicated that the Commission would take a brief recess to see if Commissioner Long could be located. He noted that the remainder of the agenda included the approval of Commission minutes, which was important since several of the campaign finance orders to be considered are based on findings set forth in those minutes. He added that the campaign finance statute permits the Commission to reduce certain statutory penalties for these violations if the entire membership of the Commission agrees unanimously to do so. The Chair stated that to afford each person who was here for a campaign finance violation the benefit of having that option under consideration, the Commission would seek to locate Commissioner Long, or to find out if he would wish for the Commission to proceed with other items on the agenda.

The meeting recessed at 1:53 p.m., and reconvened at 2:00 p.m.

The Commission reconvened at 2:00 p.m., with Commissioners Burdick, John, and Long present, and Ms. Chandler representing Commissioner Morgan as his proxy.

Commissioner Long apologized to the Chair, and the other individuals present for today's hearing, and joked that he had miscalculated how long it takes to eat in Indianapolis. He said that he was used to McDonald's at home, where it doesn't take very long. The Chair responded that he was glad that Commissioner Long was here.

## **7. Approval of Minutes**

The Chair noted that the November 20, 2003 Commission minutes had been provided to Commission members and asked for any revisions or comments.

The Chair recognized Mr. Long who moved, seconded by Mr. John, that the November 20, 2003 Commission minutes be approved as submitted. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Ms.

Chandler, Mr. John and Mr. Long) and no Commission member voting “no,” the motion was adopted.

The Chair noted that the January 20, 2004 Commission minutes had been provided to Commission members and asked for any revisions or comments.

The Chair recognized Mr. John who moved, seconded by Mr. Long, that the January 20, 2004 Commission minutes be approved as submitted. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Burdick, Ms. Chandler, Mr. John and Mr. Long) and no Commission member voting “no,” the motion was adopted.

The Chair noted that the March 10, 2004 Commission public session minutes had been provided to Commission members and asked for any revisions or comments.

The Chair recognized Mr. John who moved, seconded by Mr. Long, that the March 10, 2004 Commission minutes be approved as submitted. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Burdick, Ms. Chandler, Mr. John and Mr. Long) and no Commission member voting “no,” the motion was adopted.

## **8. Campaign Finance Enforcement**

### **8. A. Orders from Previous Commission meetings:**

The Chair and Mr. Long discussed whether the orders prepared for adoption by the Commission following public hearings at previous meetings could be adopted as a group. The Chair noted that he would need to recuse himself from participating in the final three orders listed on the agenda and defer to his proxy since these matters concerned clients represented by his law firm. The Chair requested that future agendas include both the cause numbers and order numbers in these matters.

The Chair stated that although the Commission ordinarily did not permit public testimony when considering acting on these orders, since the time to do so was when the public hearing was conducted on the violation, he understood that an individual had traveled to attend the Commission’s meeting and speak on the order concerning that individual’s committee. The chair recognized Mr. Black, who indicated that he was present regarding Order 2004-48, which related to the Black for State Representative Committee.

Mr. Long moved, seconded by Mr. John, that the Commission approve the following orders:

- i. **Order 2004-04: Dismissing Cause 03-140 (Divinity Funeral Home Corporation)**
- ii. **Order 2004-01: Dismissing Cause 03-4209-173 (Kindred Healthcare, Inc. PAC)**
- iii. **Order 2004-02: Dismissing Cause 03- 4375-177 (Indiana Citizens for Property Rights, Inc.)**
- iv. **Order 2004-03: Dismissing Cause 03-4664-180 (Microsoft Corporation PAC)**
- v. **Order 2004-12: Imposing Civil Penalty in Cause 03-321-163 (Indiana Federation of Republican Women)**
- vi. **Order 2004-17: Imposing Civil Penalty in Cause 03-4982-185 (Miller Neese PAC)**

- vii. **Order 2004-38: Imposing Civil Penalty in Cause 04-5088-49 (Waltz for State Senate Committee)**
- viii. **Order 2004-36: Imposing Civil Penalty in Cause 04-5085-46 (Walker for State Senate Committee)**
- ix. **Order 2004-37: Imposing Civil Penalty in Cause 04-5087-48 (Kern for State Senator)**
- x. **Order 2004-39: Imposing Civil Penalty in Cause 04-5089-50 (Committee to Elect Pucalik)**
- xi. **Order 2004-40: Imposing Civil Penalty in Cause 04-5091-52 (Waite for State Representative Committee)**
- xii. **Order 2004-41: Imposing Civil Penalty in Cause 04-5093-54 (Kirtley for State Representative);**
- xiii. **Order 2004-42: Imposing Civil Penalty in Cause 04-5094-55 (Hamm for State Representative Committee)**
- xiv. **Order 2004-43: Imposing Civil Penalty in Cause 04-5095-56 (Wolfe for Indiana)**
- xv. **Order 2004-44: Imposing Civil Penalty in Cause 04-5096-57 (Ingermann for State Representative Committee)**
- xvi. **Order 2004-45: Imposing Civil Penalty in Cause 04-5098-59 (Patton for State Representative Committee)**
- xvii. **Order 2004-46: Imposing Civil Penalty in Cause 04-5101-62 (Jessen for State Representative Committee)**
- xviii. **Order 2004-18: Imposing Civil Penalty in Cause 04-1728-4 (Jones for State Representative)**
- xix. **Order 2004-19: Imposing Civil Penalty in Cause 04-3273-7 (Professional Land Surveyors PAC)**
- xx. **Order 2004-20: Imposing Civil Penalty in Cause 04-3689-8 (Citizens for Robert D. Green)**
- xxi. **Order 2004-21: Imposing Civil Penalty in Cause 04-3777-11 (Sandra Dempsey for Indiana Senate)**
- xxii. **Order 2004-22: Imposing Civil Penalty in Cause 04-3828-12 (Citizens for Sally)**
- xxiii. **Order 2004-23: Imposing Civil Penalty in Cause 04-3979-14 (FOP Lodge 86 PAC)**
- xxiv. **Order 2004-24: Imposing Civil Penalty in Cause 04-4090-16 (Citizens for Anthony Underly)**
- xxv. **Order 2004-25: Imposing Civil Penalty in Cause 04-4472-21 (Hoosiers Against Crazy Taxes)**
- xxvi. **Order 2004-26: Imposing Civil Penalty in Cause 04-4527-22 (Citizens for Crabtree)**
- xxvii. **Order 2004-27: Imposing Civil Penalty in Cause 04-491-24 (The Indiana Leadership Fund PAC)**
- xxviii. **Order 2004-47: Dismissing Cause 04-4687-23 (In-Home Services PAC)**
- xxix. **Order 2004-28: Imposing Civil Penalty in Cause 04-4766-30 (Committee to Elect Mark Duwe State Representative)**
- xxx. **Order 2004-29: Imposing Civil Penalty in Cause 04-4773-32 (Friends of Pam Roth)**
- xxxi. **Order 2004-30: Imposing Civil Penalty in Cause 04-4775-33 (Committee to Elect Randy Plew State Representative)**
- xxxii. **Order 2004-31: Imposing Civil Penalty in Cause 04-4831-37 (Kinser for State Representative 55<sup>th</sup>), with this order being amended to refer to “55<sup>th</sup>” instead of “65<sup>th</sup>”, a scrivener’s error**
- xxxiii. **Order 2004-32: Imposing Civil Penalty in Cause 04-4845-38 (Dann Pecar Newman & Kleiman PAC)**

- xxxiv. Order 2004-33: Imposing Civil Penalty in Cause 04-4864-39 (Smith for Treasurer)**
- xxxv. Order 2004-34: Imposing Civil Penalty in Cause 04-4865-40 (Indiana Democrats for Accessibility)**
- xxxvi. Order 2004-35: Imposing Civil Penalty in Cause 04-4998-43 (Committee to Elect Ron Carrell)**

The chair noted that the Commission had conducted a public hearing regarding each of these causes at a previous meeting. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Ms. Chandler, Mr. John and Mr. Long) and no Commission member voting "no," the motion was adopted.

The chair then recognized Mr. Black to speak regarding Order 2004-48, which concerned

**Cause 04-5100-61 (Black for State Representative Committee)**

The Chair noted that it was not customary for the Commission to permit public comment at this time, but since Mr. Black did choose to attend this meeting, and had not been present at the last Commission meeting, the Chair invited Mr. Black to address the Commission. The Chair stated that the Commission did conduct a public hearing on this cause, and did discuss matters concerning this cause at that meeting. The Chair said that Mr. Black should have received notice of that meeting, and that the Commission did have copies of what was mailed to Mr. Black.

The chair then recognized Mr. Black to address the Commission concerning this violation. Mr. Black stated that his violation was that his report was late; that he had no committee then; that he had no money then or now. He stated that he was late in filing and had no excuse.

In response to a question from the Chair about whether this committee had now been dissolved, Mr. Black responded that there had never been a committee; that there was no chairman, no treasurer, no nothing. In response to a further question from the Chair, Mr. Black stated that he had never filed a statement of organization for this committee.

The Chair recognized Ms. Thompson, who stated that if a candidate does not open a committee after a certain period of time, the Campaign Finance staff opens a committee for the candidate, and that this was the procedure used to open the committee in Mr. Black's case.

Mr. Long asked Mr. Black if he understood that for some elected offices, state law requires that a candidate's committee be established, and that the election division set up a committee on the candidate's behalf. Mr. Black responded that no, he did not understand that.

Commission members proceeded to discuss the method used by the Commission at its previous meeting to determine the amount of the civil penalty to be imposed by Order 2004-48. The Chair noted that page 13 of the March 10, 2004 Commission minutes indicated that the penalty had been assessed at 25% of the proposed penalty of \$1,000.

The Chair recognized Ms. Thompson, who stated that the file indicates that the report was filed seven days late, and was therefore subject to a \$50 per day fine, totaling \$350, plus \$2.52 mailing expenses.

In response to a question from the Chair concerning how notice was provided to this committee, Ms. Thompson indicated that the file indicated that this notice was sent to address provided by Mr. Black when he filed his declaration of candidacy (7967 Ashton Drive, Lawrence, Indiana 46226).

In response to a question from Mr. John concerning why Mr. Black had not attended the March 10, 2004 Commission meeting, Mr. Black stated that he did not attend the meeting because he did not receive notice. In response to a question from the Chair regarding the notice of the March 10 meeting being mailed to Mr. Black at the Ashton Drive address, Mr. Black said that he did not receive this notice. Mr. Black added that he did receive the notice concerning today's Commission meeting.

In response to a question from Mr. Long, Ms. Thompson indicated that Mr. Black had not previously appeared before the Commission regarding a campaign finance violation. Mr. Long observed that the minutes regarding this matter showed a vote of three to none, and that therefore the proposed fine had probably not been reduced since all four Commission members were not present.

Mr. Long moved that the Commission reconsider its previous decision in this issue, that it reopen the public hearing, and consider the statements made today by Mr. Black as the hearing on this issue, and then for the Commission to close the hearing, unless Mr. Black wished to make any additional statement. Mr. John seconded the motion.

The Chair asked Mr. Black if he had anything else he wished to say to the Commission concerning this matter. The Chair explained that when the Commission has a campaign finance cause come before it, the Commission then conducts a public hearing. He noted that he understood Mr. Black to say that Mr. Black had not received any notice of the hearing. The Chair added that in this case, when no one appeared for the public hearing, the Commission automatically fines the maximum amount permitted under the law for the violation, which is what occurred. The Chair then observed that the amount of the fine is then included in a proposed order submitted for adoption by the Commission, which is what the Commission is considering today.

The Chair stated that under the proposed motion, the Commission would reconsider this order, hold a new public hearing, at which time Mr. Black would be sworn in, and that Mr. Black could then make the statements he has made about his circumstances. He added that the Commission could then consider this topic afresh. Mr. Long said that ordinarily this procedure would come out more in Mr. Black's favor, so he recommended that Mr. Black view this as a good idea. Mr. Black agreed.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Ms. Chandler, Mr. John and Mr. Long) and no Commission member voting "no," the motion was adopted.

The Chair then asked Mr. Black, and any other person who would be testifying on any matter that was coming before the Commission at today's meeting to please rise for the administration of the oath by Mr. Simmons. Mr. Simmons then proceeded to administer the oath to Mr. Black and all other individuals present.

The Chair then opened the public hearing on the following cause:

**Cause 04-5100-61 (Black for State Representative Committee)**

The Chair recognized Mr. Black, who stated that he was a candidate for Indiana State Representative, District 95. The Chair noted that Mr. Black had previously provided the Commission with testimony under oath in this matter. The Chair stated that if he wished, Mr. Black could confirm that the statements made earlier by him were factual, and that it would then be unnecessary for Mr. Black to repeat the statements.

Mr. Black said that he had nothing to add, except that he has been in politics for 60 years and knows just a little bit about it. He stated that when he is requested to attend, he attends. Mr. Black said that he was sorry that he did not receive the request to attend the previous Commission meeting. He remarked that if he had received the request to attend, the Commission could rest assured that he would have been here. He added that he thinks very highly of the functions performed by the local, state, and federal governments. Mr. Black said that he is one of the “greatest generation”, and served the people without fanfare or anything.

The Chair then closed the public hearing on this cause.

Mr. John moved, seconded by Mr. Long, that the civil penalty in this case be reduced from Three Hundred Fifty Dollars (\$350) to Eighty Seven Dollars and Fifty Cents (\$87.50), plus costs, which he believed would be 25% of the proposed fine. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Burdick, Ms. Chandler, Mr. John and Mr. Long) and no Commission member voting “no,” the motion was adopted.

Mr. Black asked if the Commission had reduced his fine from \$350 to \$87.50 because he did not receive notice. Mr. Long responded that no, this fine was imposed because Mr. Black did not file his report. Mr. John said that ignorance of the law is no excuse, and that Mr. Black was required to file this report. He added that since Mr. Black had come down to the Commission meeting to discuss the situation, the Commission was reducing the fine from what would have been the maximum of \$350 in this case.

Mr. Black responded that he guessed that supposed to thank the Commission for this. Mr. Long responded that the Commission had believed that Mr. Black did not receive notice of the March 10, 2004 Commission meeting, and that was why the Commission had conducted another public hearing in this cause. Mr. Black said that the Commission could have done better by eliminating the fine entirely. Mr. Long responded that he knew this, and that the Commission was not perfect. Mr. Black said, no, no one is perfect but one, and he died on the cross. Mr. Black then thanked the Commission very much.

Mr. Burdick then relinquished the chair to Ms. Huddleston, and left the meeting room. Ms. Chandler then left the meeting, with the thanks of the Commission members for her service, and Mr. Becker joined the Commission to act as Mr. Morgan’s proxy.

The Chair recognized Mr. Long, who moved that the Commission approve the following orders as submitted:

- xxxvii. Order 2004-05: Imposing Civil Penalty in Cause 03-141 (E.D.I.S., Inc.)**
- xxxviii. Order 2004-15: Dismissing Cause 03-155  
(Parsons Brinckerhoff Quade & Douglas, Inc)**
- xxxix. Order 2004-16: Dismissing Cause 03-156: (SerVaas Incorporated)**

There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Becker, Ms. Huddleston, Mr. John, and Mr. Long) and no Commission member voting “no,” the motion was adopted.

Ms. Huddleston then relinquished the chair to Mr. Burdick.

The Chair stated that the Commission would proceed to consider causes continued from previous Commission meetings.

## **8. B. Delinquent Statements of Organization**

### **i. Cause 04-5097-58 (Committee to Elect Phil Hoy)**

The Chair opened the hearing on Hoy for State Representative, Cause 04-5097-58. Mr. Hoy stated that he had previously taken the oath administered to witnesses by Mr. Simmons.

Mr. Hoy stated that he was approached by Representative Hasler to run as a candidate about a week before the filing deadline, and decided to do so about three days before the deadline. He remarked that had signed his statement of organization. Mr. Hoy added that his committee treasurer was out of town, but that Mr. Hoy thought that his treasurer had signed the statement on time. Mr. Hoy stated that he had faxed his statement of organization to the Democratic House Caucus, who was to bring the statement to the Election Division. He said that he thought that the filing was on time, but apparently the filing was a day late.

The Chair asked if there were any questions. Mr. Long remarked that he had known Mr. Hoy for many years, and would accept what he says as gospel.

In response to a question from Mr. Long, Ms. Thompson confirmed that the report was filed three days late, on March 1, 2004. The Chair thanked Mr. Hoy, and closed the public hearing on this cause.

The Chair noted that the proposed fine was One Hundred Fifty Dollars (\$150), plus Two Dollars and Fifty Cents (\$2.50) in costs. Mr. Long noted that Mr. Hoy had never been before the Commission for a campaign finance matter. Commission members noted that Mr. Hoy had sent a letter to the Commission concerning this matter, dated March 9, 2004, and proceeded to review this letter.

The Chair remarked that the Commission had a policy under which, with a unanimous vote of all Commission members, the statutory fine of \$50 per day can be reduced. He added that in these circumstances the maximum fine would be for 20 days. He stated that it had been the custom and convention of the Commission to reduce the civil penalty to 25% of the proposed maximum fine, plus costs, if the committee had not previously appeared before the Commission, but that the Commission imposed the full proposed fine on "habitual offenders".

The Chair moved, in accordance with this policy, that the Committee to Elect Phil Hoy be fined Thirty Seven Dollars and Fifty Cents (\$37.50), plus Two Dollars and Fifty Cents (\$2.50) in costs. Mr. John seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

### **ii. Cause 04-5084-45 (Montelongo for State Senator)**

The Chair opened the public hearing on Montelongo for State Senator, Cause 04-5084-45, and requested a report from staff.

Mr. John noted that the spreadsheet concerning these causes prepared for Commission members by the campaign finance staff (which is included by reference in these minutes) indicated that a phone call had been received regarding this matter.

The Chair recognized Ms. Potesta, who stated that instead of sending a letter concerning this matter, Mr. Montelongo had made a telephone call to the Election Division upon receiving notice that this matter would be taken before the Commission.



With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

Mr. Long said that he believed that a person should be present to speak to the Commission regarding these causes. The Chair stated that he agreed with Mr. Long on this. Mr. Long added that the Commission receives so much communication that he is not certain that the Commission can do it justice.

Mr. John asked the co-directors how explicit the policy had been that if a committee representative was unable to attend a Commission hearing, that the committee send a letter.

Ms. Robertson responded that when the election division speaks with a committee representative who contacts the election division about an upcoming Commission hearing, the election division does advise the representative that the election division will inform Commission members that election division staff have discussed this matter with the committee representative, even if the committee does not send a letter. She added that if the committee does send a letter, the election division does provide a copy of this letter to Commission members. Ms. Robertson said that the election division has not advised committees that the committee must follow up a telephone conversation with a letter because a letter might reduce your penalty. She indicated that the election division reported these telephone contacts as an attempt by the committee to follow up with staff concerning this matter.

The Chair stated that in the future, he would like to have a representative from each committee present to answer Commission questions. He suggested that the Commission take into account in each cause whether a committee representative had made any effort to communicate with the Commission or the election division regarding this matter. Mr. Long and Mr. John expressed their agreement with the Chair in this matter.

The Chair noted that this committee had not previously appeared before the Commission, and that the proposed fine was One Thousand Dollars (\$1,000), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs. Mr. John remarked that although there had been a telephone call received from the committee concerning this cause, the committee had made no further efforts to communicate regarding this matter or to submit any information that would provide mitigating facts for the Commission to consider.

Mr. John moved, seconded by Mr. Long, that Montelongo for State Senator be fined One Thousand Dollars (\$1,000), plus Two Dollars and Fifty Cents (\$2.50) in costs. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

### **iii. Cause 04-5086-47 (White for State Senator)**

The Chair opened the public hearing on White for State Senator, Cause 04-5086-47, and requested a report from staff.

Mr. Long noted that this committee had one previous campaign finance matter come before the Commission. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had previously appeared on one occasion before the Commission, and that the proposed fine was One Thousand Dollars (\$1,000), plus Two Dollars

and Fifty Cents (\$2.50) in mailing costs. The Chair added that the committee had made no effort to communicate with the Commission regarding this matter.

Mr. Long moved, seconded by Mr. John, that White for State Senator be fined One Thousand Dollars (\$1,000), plus Two Dollars and Fifty Cents (\$2.50) in costs. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**iv. Cause 04-5090-51 (Citizens to Elect Jerry Baffa)**

The Chair opened the public hearing on Citizens to Elect Jerry Baffa, Cause 04-5090-51, and requested a report from staff.

Ms. Potesta noted that Mr. Baffa had sent a letter to the Commission concerning this matter, dated March 3, 2004.

With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission, and that the proposed fine was Two Hundred Fifty Dollars (\$250), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs. The Commission proceeded to review Mr. Baffa's letter. Mr. John stated that the letter indicated that Mr. Baffa was a first-time candidate, and that Mr. Baffa acknowledged his error in believing that the filing deadline was April 16, 2004. He added that Mr. Baffa requested a reduction in the proposed fine.

Mr. John moved that the fine in this cause be reduced by half, and that the Commission acknowledge a prospective desire by the Commission to have committee representatives appear before the Commission, rather than simply submit letters or make telephone calls. Mr. John noted that in this case, the committee had submitted a letter, and since the Commission's past practice has been to give consideration to committees who did so, that the fine in this matter be reduced to One Hundred Twenty Five Dollars (\$125), plus Two Dollars and Fifty Cents (\$2.50) in costs. Mr. Long seconded the motion.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**v. Cause 04-5092-53 (Blacketor for Indiana State Representative)**

The Chair opened the public hearing on Blacketor for Indiana State Representative, Cause 04-5092-53, and requested a report from staff.

Ms. Potesta noted that Ms. Blacketor had sent a letter to the Commission concerning this matter, dated March 1, 2004. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission, and that the proposed fine was One Hundred Fifty Dollars (\$150), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs. The Commission proceeded to review Ms. Blacketor's letter.

Mr. John moved that since a letter had been submitted in this matter, and in the absence of a personal appearance from the committee, that the fine against Blacketor for Indiana State Representative be reduced to Seventy Five Dollars (\$75), plus Two Dollars and Fifty Cents (\$2.50) in costs. Mr. Long seconded the motion for purposes of discussion.

Mr. Long observed that he understood that this filing was due January 27, 2004, and that the letter from Ms. Blacketor indicates that the CAN-2 form was sent by overnight delivery to the election division. He noted that the letter indicates that Ms. Candy Mays of the election division staff had called the candidate regarding this matter on January 27, 2004 to advise the candidate that another filing was needed. He added that the letter then indicated that the candidate sent this additional filing by overnight delivery.

The Chair recognized Ms. Robertson, who stated that the CAN-2 is the declaration of candidacy form used by an individual who is filing as a candidate at the primary election, and that the CFA-1 is the statement of organization form that these candidates must also file. She noted that the candidate filed the declaration of candidacy, and then was advised by the election division that the candidate also needed to file the statement of organization. In response to a question from Mr. Long, Ms. Robertson indicated that the candidate had filed the CFA-1 form after the deadline

Mr. Long noted that Ms. Blacketor's letter indicates that the statement of organization for this committee was also filed with the St. Joseph County circuit court clerk on December 5, 2003. He remarked that this individual was a candidate for state representative, and that the committee had then failed to forward this the statement of organization to the election division for filing.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

#### **xvi. Cause 04-5099-60 (Gibson for State Representative Committee)**

The Chair opened the public hearing on Gibson for State Representative Committee, Cause 04-5099-60, and requested a report from staff.

Ms. Potesta noted that Mr. Gibson had sent a letter to the Commission concerning this matter, dated March 5, 2004. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission, and that the proposed fine was Three Hundred Fifty Dollars (\$350), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs. The Commission proceeded to review Mr. Gibson's letter. Mr. John noted that the letter did include an explanation of this matter.

Mr. John moved that since a letter of explanation had been submitted in this matter, that the fine against Gibson for State Representative be reduced to One Hundred Seventy Five Dollars (\$175), plus Two Dollars and Fifty Cents (\$2.50) in costs. Mr. Long seconded the motion.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

#### **8. C. Delinquent January 2004 Annual Reports**

**i. Cause 04-4783-34 (Committee to Elect Larry Chubb)**

The Chair opened the public hearing on Committee to Elect Larry Chubb, Cause 04-4783-34, and requested a report from staff.

Ms. Potesta noted that Mr. Chubb had sent a undated letter to the Commission concerning this matter, which was received by the election division on March 10, 2004. The Commission proceeded to review Mr. Chubb's letter.

The Chair recognized Mr. Chubb, who stated that he had taken the oath for his testimony. Mr. Chubb said that he had marked the filing deadline on his calendar as January 21, 2004. He remarked that he had intended to file the report on time, and had mailed it on that date, but that the report did not arrive on time, and that was all there was to it.

Mr. John stated that since Mr. Chubb was present, he would make a statement to serve as an example for other committees. Mr. John said that the campaign finance rules are there for reasons, and added that the Commission receives a variety of excuses akin to "the dog ate my homework assignment." He remarked that when a person sets up a candidate's committee or a political action committee there is a responsibility that goes along with undertaking that. Mr. John stated that people really need to pay attention to that responsibility. He added that he appreciated the fact that Mr. Chubb had personally appeared, and was explaining his actions to the Commission. Mr. John stated that the Commission should give due consideration to that, but that there should not be any pass given to persons who believe that the campaign finance rules do not apply to them. He said that ignorance of the law does not apply in any other circumstance, and should not apply in this circumstance either.

Mr. Long noted that the file indicated that Mr. Chubb's report was sent by priority mail on March 21, but not received until January 26, 2004, which was just as Mr. Chubb had stated. In response to a question from the Chair, Mr. Chubb stated that he had now closed his committee.

The Chair thanked Mr. Chubb and then closed the public hearing on this matter.

Mr. John moved that the since this committee had not previously appeared before the Commission, and that Mr. Chubb had personally appeared before the Commission, and due to the totality of the circumstances in this case that the proposed fine of Two Hundred Fifty Dollars (\$250), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against the Committee to Elect Larry Chubb be reduced to Twenty Five Dollars (\$25), plus Two Dollars and Fifty Cents (\$2.50) in costs.

Mr. Long expressed his disagreement with the law that applies to the requirement for receipt of campaign finance reports, in that the United States Supreme Court recognizes the effect of depositing a document in the postal system by certified mail, but that the Election Commission cannot recognize this deposit in the U.S. mail due to state statute. Mr. Long agreed that Mr. Chubb did mail his report on the day that the report was due, and that since it had been mailed by express mail, his reasoning was that express mail should have gotten the report to the election division quicker than it did. Mr. Long said that he would second the motion for a \$25 fine since, although Mr. Chubb did violate the statute since the Commission cannot recognize his sending the report by certified mail, Mr. Chubb did make the effort to file the report in this case. Mr. Long added that he also seconded the motion not to deviate from the Commission's policy in these cases, but since Mr. Chubb's report should have been one or two days late at the most, and that this motion recognized this possibility. The Chair and Mr. Long agreed that in addition to those facts, Mr. Chubb had shown up to testify before the Commission, and that this should count for something.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

Mr. Burdick then relinquished the chair to Ms. Huddleston, and left the meeting room.

**ii. Cause 04-4367-20 (SAFECO PAC)**

The Chair opened the public hearing on SAFECO PAC, Cause 04-4367-20, and requested a report from staff.

Ms. Potesta noted that SAFECO PAC had sent a letter dated March 1, 2004 to the Commission concerning this matter. The Commission proceeded to review this letter.

With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

Mr. John noted that even though the report was filed just a few minutes late, SAFECO is a corporate entity that should be paying more attention to its compliance with campaign finance statutes, and that a committee representative has not appeared concerning this matter. Mr. John moved, seconded by Mr. Long, that the Commission impose the full penalty of Fifty Dollars (\$50), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against SAFECO PAC.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Ms. Huddleston, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**iii. Cause 04-4709-25 (Paul Helmke Committee)**

The Chair opened the public hearing on Paul Helmke Committee, Cause 04-4709-25, and requested a report from staff.

Ms. Potesta noted that this committee had sent several documents dated February 26, 2004 and March 3, 2004 to the Commission concerning this matter. The Commission proceeded to review these documents.

With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

Mr. John remarked that the campaign finance rules are not that hard to follow, and that a committee representative had not appeared concerning this matter. Mr. Long noted that this committee was one day late. Mr. John moved, seconded by Mr. Long, that the Commission impose the full penalty of Fifty Dollars (\$50), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Paul Helmke Committee.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Ms. Huddleston, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

Ms. Huddleston then relinquished the chair to Mr. Burdick.

**iv. Cause 04-1528-2 (Indiana Federation of Teachers Committee on Political Education)**

The Chair opened the public hearing on Indiana Federation of Teachers Committee on Political Education, Cause 04-1528-2. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared two previous times before the Commission concerning campaign finance violations. The chair added that this committee had sent a letter dated March 3, 2004 to the Commission. Commission members proceeded to review this letter.

Mr. Long moved, seconded by Mr. John, that the Commission impose the full penalty of One Hundred Dollars (\$100), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against the Indiana Federation of Teachers Committee on Political Education.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**v. Cause 04-1587-3 (Johnson for State Senate Committee)**

The Chair opened the public hearing on Cause 04-1587-3, Johnson for State Senate Committee. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared one previous time before the Commission concerning campaign finance violations. The chair added that this committee had not sent any letter to the Commission.

Mr. Long moved, seconded by Mr. John, that the Commission impose the full penalty of One Thousand Dollars (\$1,000), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against the Johnson for State Senate Committee.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**vi. Cause 04-185-5 (Citizens for Gregg)**

The Chair opened the public hearing on Cause 04-185-5, Citizens for Gregg. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair recognized Ms. Robertson who stated that she had spoken with Mr. Gregg, who had telephoned her several times concerning this matter both before the March 10, 2004 Commission meeting and before this Commission meeting. She noted that former Speaker Gregg had undergone surgery for prostate cancer earlier this week, and had expressed his regret that he was not able to attend this Commission meeting due to his surgery. She added that Mr. Gregg had advised her that he intended to close out his committee and had never been late in filing a campaign finance report during all of the years that he served in the General Assembly.

Mr. Long said that based on this information, Mr. Gregg had a legitimate excuse. Mr. Long moved, seconded by Mr. John, that the proposed fine of Fifty Dollars (\$50), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Citizens for Gregg be reduced to Twelve Dollars

(\$12), plus Two Dollars and Fifty Cents (\$2.50) in costs. The Chair expressed his agreement with the motion and wished Mr. Gregg good luck with his surgery.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**vii. Cause 04-3265-6 (George Witwer for State Senate Committee)**

The Chair opened the public hearing on George Witwer for State Senate Committee, Cause 04-3265-6. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The chair added that this committee had sent a letter dated March 5, 2004 to the Commission. Commission members proceeded to review this letter.

Mr. Long stated that he was not certain how the Commission was dealing with committees that sent a letter, but did not have a committee representative appear before the Commission.

After further Commission discussion on this point, Mr. John moved, seconded by Mr. Long, that the proposed fine of Fifty Dollars (\$50), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against George Witwer for State Senate Committee be reduced to Twenty Five Dollars (\$25), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**viii. Cause 04-3766-9 (Birk for State Representative Committee)**

The Chair opened the public hearing on Birk for State Representative, Cause 04-3766-9. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The chair added that this committee had sent a letter dated March 3, 2004 to the Commission. Commission members proceeded to review this letter.

The Chair moved, seconded by Mr. Long, that the proposed fine of Three Hundred Dollars (\$300), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Birk for State Representative Committee be reduced to One Hundred Fifty Dollars (\$150), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**ix. Cause 04-3775-10 (Meijer Political Action Committee)**

The Chair opened the public hearing on Meijer Political Action Committee, Cause 04-3775-10, until the next Commission meeting. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The chair added that this committee had sent a letter dated August 3, 2004 to the Commission. Commission members proceeded to review this letter.

Mr. Long noted that this committee's file contained tracking documentation indicating that the committee had mailed this report on January 16, 2004, five days before the deadline. He added that he would like to recognize this effort. Mr. John stated that he agreed. Mr. Long added that this reflected an ongoing postal department problem.

Mr. John moved that, based on the explanation in the letter, the proposed fine of Two Hundred Fifty Dollars (\$250), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Meijer Political Action Committee be reduced to One Hundred Twenty Five Dollars (\$125), plus Two Dollars and Fifty Cents (\$2.50) in costs. Mr. Long seconded the motion.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**x. Cause 04-3951-13 (Hoosiers for Witwer)**

The Chair opened the public hearing on Hoosiers for Witwer, Cause 04-3951-13. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The chair added that this committee had sent a letter dated March 5, 2004 to the Commission. Commission members proceeded to review this letter.

Mr. Long moved, seconded by Mr. John, that the proposed fine of One Thousand Dollars (\$1,000), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Hoosiers for Witwer be reduced to Five Hundred Dollars (\$500), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xi. Cause 04-3996-15 (Friends of Steve Johnson)**

The Chair opened the public hearing on Cause 04-3996-15, Friends of Steve Johnson. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared two previous times before the Commission concerning campaign finance violations. The chair added that this committee had not sent any letter to the Commission.

Mr. Long moved, seconded by Mr. John, that the Commission impose the full penalty of One Thousand Dollars (\$1,000), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against the Johnson for State Senate Committee.



There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting “no,” the motion was adopted.

**xii. Cause 04-4096-17 (Mutual Insurance Companies Association of Indiana PAC)**

The Chair opened the public hearing on Mutual Insurance Companies Association of Indiana PAC, Cause 04-4096-17. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared two previous times before the Commission concerning campaign finance violations. The chair added that this committee had sent a letter dated March 4, 2004 to the Commission. Commission members proceeded to review this letter.

Mr. Long noted that this letter states that the committee had sent this report by certified mail, from Carmel, on January 16, 2004, five days before the deadline. Commission members noted that the committee’s file also shows that January 16, 2004 was stamped on green certified mail receipt card. In response to a question from the chair, Ms. Robertson stated that the election division’s experience has been the sender receives a signature for proof of receipt, that certified mail takes longer to be processed through the postal service.

Mr. Long moved, seconded by Mr. John, that the proposed fine of One Hundred Dollars (\$150), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Mutual Insurance Companies Association of Indiana PAC be reduced to Seventy Five Dollars (\$75), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting “no,” the motion was adopted.

**xiii. Cause 04-4277-18 (Opportunity Indiana Political Action Committee)**

The Chair opened the public hearing on Opportunity Indiana Political Action Committee, Cause 04-4277-18. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The chair added that this committee had sent a letter dated March 5, 2004 to the Commission. Commission members proceeded to review this letter.

The Chair moved, seconded by Mr. John, that the proposed fine of Fifty Dollars (\$50), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Opportunity Indiana Political Action Committee be reduced to Twenty Five Dollars (\$25), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting “no,” the motion was adopted.

**xiv. Cause 04-4317-19 (Citizens for Patty Morgan)**

The Chair opened the public hearing on Citizens for Patty Morgan, Cause 04-4317-19, With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared two previous times before the Commission concerning campaign finance violations. The chair added that this committee had sent letters dated January 28, 2004 and March 1, 2004 to the Commission. Commission members proceeded to review these letters.

Commission members noted that Ms. Morgan's letters indicated that she worked for the City of Goshen.

In response to a question from Mr. John, Ms. Potesta stated that on Ms. Morgan indicated on her report that she was a candidate for "council", or a similar term, implying that she was a candidate for a local office and not state office. Ms. Potesta added that as a result, Ms. Morgan's report was returned to her for filing with the proper county election board. In response to a question from the chair, Ms. Potesta responded that Ms. Morgan was a candidate for state representative. Mr. Long remarked that Ms. Morgan appeared to be confused regarding what office she was running for. He added that in his home county, a candidate had intended to file for clerk, but had filed for town council.

Mr. John moved, seconded by Mr. Long, that the proposed fine of Three Hundred Fifty Dollars (\$350), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Citizens for Patty Morgan be reduced to Two Hundred Sixty Two Dollars and Fifty Cents (\$262.50), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xv. Cause 04-4722-26 (Hoosiers for Kent Benson)**

The Chair opened the public hearing on Hoosiers for Kent Benson, Cause 04-4722-26. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared one previous time before the Commission concerning campaign finance violations. The chair added that this committee had sent a letter dated February 29, 2004 to the Commission. Commission members proceeded to review this letter. In response to a question from the Chair, Ms. Thompson stated that this committee has not yet been closed.

Mr. John moved, seconded by Mr. Long, that the proposed fine of Seven Hundred Fifty Dollars (\$750), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Hoosiers for Kent Benson be reduced to Three Hundred Seventy Five Dollars (\$375), plus Two Dollars and Fifty Cents (\$2.50) in costs.

Mr. John added that if this committee is not closed out and appears before the Commission again, he would be inclined to impose the full fine.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xvi. Cause 04-4733-27 (Friends of Earl Harris)**

The Chair opened the public hearing on Friends of Earl Harris, Cause 04-4733-27. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The chair added that this committee had sent a letter dated March 8, 2004 to the Commission. Commission members proceeded to review this letter.

Mr. John stated that the letter indicated that this committee did file its report on time with the Lake County election board office, but was advised by someone that sending a campaign finance report by fax to the state election division was not permitted. Mr. John added that the letter indicated that as a result, this report was mailed to the election division and arrived after the filing deadline. Mr. Long noted that the report was filed with the election division six days late. Mr. John remarked that this was another example of why a committee should not leave it to others to determine how to comply with campaign finance laws. Mr. Long remarked that we could save a lot of money if they all did that, since the state spends a lot of money to print campaign finance manuals to give away to teach people how to file campaign finance reports.

Mr. John moved, seconded by Mr. Long, that the proposed fine of Three Hundred Dollars (\$300), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Friends of Earl Harris be reduced to One Hundred Fifty Dollars (\$150), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xvii. Cause 04-4762-28 (Friends of Mike Wallin Committee)**

The Chair opened the public hearing on Friends of Mike Wallin Committee, Cause 04-4762-28. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The chair added that this committee had sent letters dated February 26, 2004 and August 4, 2004 to the Commission. Commission members proceeded to review these letters. The Chair noted that this was the best kind of letter in that it simply acknowledged that the committee was wrong.

The Chair moved, seconded by Mr. John, that the proposed fine of Four Hundred Dollars (\$400), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Friends of Mike Wallin Committee be reduced to Two Hundred Dollars (\$200), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xviii. Cause 04-4764-29 (Friends to Elect Jean Macdonald)**

The Chair opened the public hearing on Friends to Elect Jean Macdonald, Cause 04-4764-29. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared one previous time before the Commission concerning campaign finance violations. The chair added that this committee had sent a letter dated March 8, 2004 to the Commission. Commission members proceeded to review this letter.

In response to a question from Mr. Long, Ms. Potesta stated that this committee has filed a final report. Mr. Long noted that even though this committee has appeared on one previous time before the Commission, the committee has filed its final report, which is helpful.

Mr. Long moved, seconded by Mr. John, that the proposed fine of One Thousand Dollars (\$1,000), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Friends to Elect Jean Macdonald be reduced to Five Hundred Dollars (\$500), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xix. Cause 04-4769-31 (Good & Lawful Christian Men for John Anthony Malan State Representative)**

The Chair opened the public hearing on Good & Lawful Christian Men for John Anthony Malan State Representative, Cause 04-4769-31. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared one previous time before the Commission concerning campaign finance violations. The chair added that on August 25, 2004, the election division had received an undated document from this committee. Commission members proceeded to review this document.

Mr. Long noted that Mr. Malan's document indicates that he cannot appear in person because Mr. Malan is currently being held in the Lake County Jail.

In response to a question from Mr. John, Ms. Thompson stated that the election division had never received this report from the committee. Mr. John remarked that there was no evidence provided in the document submitted from this committee indicating that Mr. Malan could not have filed this report. Mr. Long suggested that the Commission should probably administratively close this committee. In response to a question from Mr. Long, Ms. Thompson indicated that the committee could be administratively closed after two years.

Mr. John moved, seconded by Mr. Long, that the Commission impose the full penalty of One Thousand Dollars (\$1,000), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Good & Lawful Christian Men for John Anthony Malan State Representative.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xx. Cause 04-4792-35 (Sabbagh Election Committee)**

The Chair opened the public hearing on Sabbagh Election Committee, Cause 04-4792-35. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The chair added that this committee had sent a letter dated March 5, 2004 to the Commission. Commission members proceeded to review this letter.

Mr. Long moved, seconded by the Chair, that the proposed fine of Three Hundred Fifty Dollars (\$350), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Sabbagh Election Committee be reduced to One Hundred Seventy Five Dollars (\$175), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xxi. Cause 04-4811-36 (Phipps for State Senate)**

The Chair opened the public hearing on Phipps for State Senate, Cause 04-4811-36. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The chair added that this committee had sent a letter dated March 8, 2004 to the Commission. Commission members proceeded to review this letter.

Mr. Long moved, seconded by the Chair, that the proposed fine of Two Hundred Fifty Dollars (\$250), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Phipps for State Senate be reduced to One Hundred Twenty Five Dollars (\$125), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xxii. Cause 04-4933-41 (Frugal Hoosiers for Mitch)**

The Chair opened the public hearing on Frugal Hoosiers for Mitch, Cause 04-4933-41. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The chair added that this committee had sent letters dated March 10, 2004 and August 10, 2004 to the Commission. Commission members proceeded to review these letters.

Mr. John moved, seconded by Mr. Long, that the proposed fine of Fifty Dollars (\$50), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Frugal Hoosiers for Mitch be reduced to Twenty Five Dollars (\$25), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xxiii. Cause 04-4953-42 (Proud Republicans Inviting Democratic Endorsement)**

The Chair opened the public hearing on Proud Republicans inviting Democratic Endorsement, Cause 04-4953-42. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The chair added that this committee had sent a letter dated March 9, 2004 to the Commission. Commission members proceeded to review this letter.

Mr. John moved, seconded by Mr. Long, that the proposed fine of Three Hundred Fifty Dollars (\$350), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Proud Republicans Inviting Democratic Endorsement be reduced to One Hundred Seventy Five Dollars (\$175), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xxiv. Cause 04-5012-44 (Thomas Keiser Exploratory Committee)**

The Chair opened the public hearing on Thomas Keiser Exploratory Committee, Cause 04-5012-44. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The chair added that this committee had sent a letter dated March 4, 2004 to the Commission. Commission members proceeded to review this letter.

Mr. Long moved, seconded by Mr. John, that the proposed fine of Four Hundred Dollars (\$400), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Thomas Keiser Exploratory Committee be reduced to Two Hundred Dollars (\$200), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**8. D. New Campaign Finance Causes; Delinquent Statements of Organization:**

**i. Cause 04-5185-63 (Bethany M. Hayes for State Representative)**

The Chair opened the public hearing on Bethany M. Hayes for State Representative, Cause 04-5185-63. The Chair recognized Ms. Hayes.

Ms. Hayes stated that when she had read the statute setting forth the deadline for filing a candidate committee's statement of organization, she thought that she qualified under the ten day deadline, rather than the seven day deadline in the law. She added that she found out later by calling the election division that she was subject to the seven day deadline, and therefore was a day late in filing. The Chair thanked Ms. Hayes for her testimony, and closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations.

Mr. John moved, seconded by Mr. Long, that the proposed fine of Fifty Dollars (\$50), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Bethany M. Hayes for State Representative Committee be reduced to Twelve Dollars and Fifty Cents (\$12.50), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**ii. Cause 04-5188-98 (Ballenger for State Representative)**

The Chair opened the public hearing on Ballenger for State Representative, Cause 04-5188-98. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The chair recognized Ms. Robertson, who stated that she believed she had spoken with Ms. Ballenger this morning. Ms. Robertson stated that on August 25, 2004, Ms. Ballenger had faxed the election division a copy of the envelope bearing a date stamp indicating when she had received it. Ms. Robertson added that she understood that the statement of organization from this committee was due on July 13, 2004, and that Ms. Ballenger was unaware that she was required to establish a committee until she received notice on July 15 that the election division had established a committee on her behalf. Ms. Robertson understood that Ms. Ballenger had not opened this notice from the election division until July 27, 2004. Commission members proceeded to review this document.

In response to a question from Mr. Long, Ms. Thompson stated that the election division had sent Ms. Ballenger a notice on July 15, advising her that the statement of organization was delinquent. Mr. Long joked that perhaps Ms. Ballenger had not received this notice until July 26 if it had been sent by certified mail.

The Chair moved, seconded by Mr. Long, that the proposed fine of Seven Hundred Dollars (\$700), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Ballenger for State Representative be reduced to Three Hundred Fifty Dollars (\$350), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**iii. Cause 04-5190-99 (Garrett for State Representative)**

The Chair opened the public hearing on Garrett for State Representative, Cause 04-5190-99. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The chair noted that this committee had sent a letter dated August 2, 2004 to the Commission. Commission members proceeded to review this document. Mr. John remarked that the letter was a handwritten *mea culpa*.

Mr. John moved, seconded by Mr. Long, that the proposed fine of Six Hundred Fifty Dollars (\$650), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Garrett for State

Representative be reduced to Three Hundred Twenty Five Dollars (\$325), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**8. E. New Campaign Finance Causes; Delinquent March 2004 Regular Party Committee Annual Reports:**

**i. Cause 04-2082-65 (Indiana Third Congressional District Democratic Committee)**

The Chair opened the public hearing on Indiana Third Congressional District Democratic Committee, Cause 04-2082-65. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The chair noted that this committee had sent a letter dated August 20, 2004 to the Commission. Commission members proceeded to review this document. The Chair noted that this committee had appeared two previous times before the Commission concerning campaign finance violations.

Mr. John moved, seconded by Mr. Long, that the proposed fine of One Hundred Dollars (\$100), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Indiana Third Congressional District Democratic Committee be reduced to Fifty Dollars (\$50), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**ii. Cause 04-4695-66 (Republican 2<sup>nd</sup> District Central Committee)**

The Chair opened the public hearing on Republican 2<sup>nd</sup> District Central Committee, Cause 04-4695-66. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The chair noted that this committee had sent an undated letter received by the election division on April 23, 2004, and a letter to the election division dated July 29, 2004. Commission members proceeded to review these documents. The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations.

Mr. Long moved, seconded by Mr. John, that the proposed fine of Two Hundred Dollars (\$200), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Republican 2<sup>nd</sup> District Central Committee be reduced to One Hundred Dollars (\$100), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**8. F. New Campaign Finance Causes; Delinquent April 2004 Pre-Primary Reports:**



**i. Cause 04-119-67 (Teachers PAC of St. Joseph Valley)**

The Chair opened the public hearing on Teachers PAC of St. Joseph Valley, Cause 04-119-67, and recognized Ms. Nancy Pappas.

Ms. Pappas stated that she was with the Indiana State Teachers' Association (ISTA), and was here representing this committee. She also introduced her assistant, Ms. Donna Heinz.

Ms. Pappas said that this committee had filed on time at the local level. Ms. Pappas introduced into evidence documents setting forth this committee's report, which were accepted and reviewed by the Commission.

Ms. Pappas stated that ISTA has over thirty local PACs, and asks them to send their reports to ISTA. She noted that ISTA checks these reports for legal compliance, and then give an OK back to the local PACs. She added that the local PACs then send in their copies for filing with the original signatures.

Ms. Pappas remarked that this committee's report was received on time by ISTA. She said that this was ISTA's error, not the committee's error. Ms. Pappas stated that Ms. Heinz is very good about checking to make certain that each local PAC report has been received and placed in the pile to brought over for filing with the election division. Ms. Pappas added that after Ms. Heinz filed these reports, she returned to the office and discovered that she had left this committee's report behind. She said that Ms. Heinz immediately returned to the election division to file the report. Ms. Pappas noted that the report indicated that it was filed with the election division at 12:21 p.m. on the due date.

Ms. Pappas stated that this committee's reports were timely filed with the Elkhart County election board and the St. Joseph County election board on April 14, 2004, two days before the deadline. Ms. Pappas said that ISTA regrets and apologizes this error, which was completely inadvertent. She noted that the reports for the remaining three local PACs were filed on time with the election division. She added that, to her knowledge, this committee has had no previous complaints filed against it, at either the state or local level.

The Chair thanked Ms. Pappas for her testimony and closed the public hearing in this matter.

Mr. John moved, seconded by Mr. Long, that the proposed fine of Fifty Dollars (\$50), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Teachers PAC of St. Joseph Valley be reduced to Twelve Dollars and Fifty Cents (\$12.50), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**ii. Cause 04-886-70 (Beer Industry PAC)**

The Chair opened the public hearing on Beer Industry PAC, Cause 04-886-70, and recognized Mr. Marc Carmichael, who stated that he was president of the Indiana Beverage Alliance, and the treasurer of this committee.

Mr. Carmichael said that this was the committee's first attempt to file its report electronically. He indicated that the committee did file in a timely manner, but when the committee hit "send" for the email, the committee had forgotten to attach the attachment. He noted that, as in most

cases where this happens, he did not realize that he had made a mistake until someone pointed this out to him.

Mr. Carmichael stated that he did not know that he had failed to properly file the report until he read in Mr. Ed Feigenbaum's newsletter that the committee's report was delinquent, and that he was surprised to read this.

Mr. Carmichael remarked that he then went on line to check the committee's file, which did indicate that the committee had filed timely. He added that he then contacted the election division, and discovered that the email which should have contained the report had been filed on time, but that the committee's report had not been attached to that email. He said that on the same day, the committee refilled the report electronically, and did attach the attachment, and that this was the reason for the delinquency.

Mr. John noted that this committee had appeared two previous times before the Commission, and asked what were the circumstances concerning those violations. Mr. Carmichael said that he did not know immediately, and would have to consult the committee's records since he had not served as treasurer for very long. Ms. Thompson stated that the committee had been delinquent for a report due during 2000 report and a report due during 1996. Mr. Carmichael responded that he had been serving as treasurer in 2000, but not in 1996. Commission members joked that this must be a leap year problem.

Mr. Long stated that he was sympathetic to the committee's effort to file, and joked that perhaps the committee should have known better than to depend on electronics. Mr. Carmichael responded that the committee had been trying to do the right thing.

The Chair thanked Mr. Carmichael for his testimony and closed the public hearing in this matter.

Mr. John moved, seconded by Mr. Long, that the proposed fine of Three Hundred Fifty Dollars (\$350), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Beer Industry PAC be reduced to Eighty Seven Dollars and Fifty Cents (\$87.50), plus Two Dollars and Fifty Cents (\$2.50) in costs.

Mr. Long said that he understood that the Commission was giving this committee the benefit of making the effort to file in this case, and not noting any previous offenses.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

### **iii. Cause 04-1018-71 (Jeff Espich for State Representative)**

The Chair opened the public hearing on Jeff Espich for State Representative, Cause 04-1018-71, and recognized State Representative Espich.

Representative Espich introduced himself as a candidate for Indiana State Representative District 82. He stated that his report did not arrive on time to the election division before the April 16, 2004 pre-primary filing deadline. He said that he understands the law, and did not meet the standards of the law.

Representative Espich stated that he did mail the report to the election division on April 12, 2004, and noted that Mr. King had advised him that the envelope containing this report was postmarked for the morning of April 12, 2004. Representative Espich noted that the report was not received by the election division until six or seven days later.

Representative Espich provided Commission members with a copy of the committee's report filed locally with the county election board in Bluffton on April 13, 2004. He indicated that this report had been mailed simultaneously to the county on April 12. The Commission accepted and reviewed the documents provided by Representative Espich.

Representative Espich stated that he had no excuse, but did believe he had made a good faith effort.

Mr. Long stated that he wished the legislature could provide the Commission some relief in these cases. He added that he was most uncomfortable with the current filing law when people do try to comply with the statute. He said that he understood that if the law was amended to recognize sending a report by certified mail, a committee could take advantage to delay receipt of the report by the election division. Mr. Long suggested that the legislature could provide relief by specifying that if a committee mailed the report by certified mail at least five calendar days before the due date for the report, and the election division did not receive the mailed report until after the deadline, then that mailing should be considered timely.

Representative Espich responded that his report in this case was sent by regular mail, not certified mail, and he believed that this was the first time that he had sent his report to the election division by mail. He indicated in the past he had always hand carried the report to the election division for filing. He added that this would probably be the last time he would mail in his report.

The Chair and Mr. Long thanked Representative Espich for his attendance and his testimony. The chair then closed the public hearing in this matter.

Mr. Long moved, seconded by Mr. John, that the proposed fine of Fifty Dollars (\$50), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Jeff Espich for State Representative be reduced to Twelve Dollars and Fifty Cents (\$12.50), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

#### **iv. Cause 04-3436-76 (Indiana Defense Lawyers PAC)**

The Chair opened the public hearing on Indiana Defense Lawyers PAC, Cause 04-3436-76, and recognized staff for a report.

Ms. Thompson stated that the committee's representative had left a note indicating that he had been present since 1 o'clock, but had been required to leave to appear in court. The Commission accepted and reviewed the note left by the committee's representative.

The Chair then closed the public hearing in this matter.

The Chair stated that the note from this committee indicated that the report was late and was filed on the next business day, and that to his knowledge, the committee had not previously been before the Commission for campaign finance violations. Mr. Long noted that this committee had appeared one previous time before the Commission concerning campaign finance violations.

In response to a question from Mr. Long, Mr. John stated that this was not the political action committee for public defenders. Mr. Long stated that he was not a member of this PAC.

Mr. Long moved, seconded by Mr. John, that the proposed fine of Two Hundred Fifty Dollars (\$250), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Indiana Defense Lawyers PAC be reduced to One Hundred Twenty Five Dollars (\$125), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**v. Cause 04-3174-75 (Plumbing-Heating-Cooling Contractors Political Action Committee)**

The Chair opened the public hearing on Cause 04-3174-75 (Plumbing-Heating-Cooling Contractors Political Action Committee), and recognized Ms. Brenda Dant.

Ms. Dant stated that she is the executive director of the Indiana Association of Plumbing-Heating and Cooling Contractors. She apologized to the Commission and said that missing the filing deadline was an oversight on her part. She said that missing a filing deadline had not happened before, and would not happen again. Commission members reviewed the letter from this committee dated July 29, 2004.

The Chair thanked Ms. Dant for her attendance and testimony, and then closed the public hearing in this matter.

Mr. John moved, seconded by Mr. Long, that the proposed fine of Three Hundred Fifty Dollars (\$350), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Plumbing-Heating-Cooling Contractors Political Action Committee be reduced to Eighty Seven Dollars and Fifty Cents (\$87.50), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**vi. Cause 04-3973-77 (Indiana McDonald's Operator PAC)**

The Chair opened the public hearing on Indiana McDonald's Operator PAC, Cause 04-3973-77, and recognized Mr. Randy Shields.

Mr. Shields said that he was the embarrassed chairperson of this committee. He was representing the committee, and the committee's treasurer, Mr. Dave Sparks, who lives in Mishawaka, and was unable to attend this Commission meeting.

Mr. Shields apologized for taking up the Commission's time due to this late filing, and that the committee was at fault, plain and simple. He said that he believed in our political process, and appreciated the opportunity to explain the committee's inadequacies, so that the committee might look a little less irresponsible.

Mr. Shields noted that he had sent a letter of apology to the Commission. Commission members reviewed the letter dated August 24, 2004 from Mr. Shields.

Mr. Shields said that the committee had a new treasurer, who had not yet acclimated himself to the procedures, for which Mr. Shields accepted blame. Mr. Shields said that he would commit to letting the treasurer know all of the filing dates ahead of time, and making sure that the treasurer files properly.

Mr. Shields added that Mr. Sparks had forgotten to file before a worldwide convention of McDonald's was held, which some 12,000 individuals attended. He added that the chairman and chief operating officer of McDonald's had died suddenly during the convention, and that the convention was in turmoil as a result. He noted that the death of their beloved chairman had a shock, and he had helped McDonald's through a very rocky five year period of the company's history. Mr. Sparks did receive the notice from the election division concerning this matter after returning from the convention, and had then promptly filed the report.

Mr. Shields stated that the election division records had shown the name of the committee's former treasurer, with the new treasurer's address. He added that Mr. Sparks had brought this matter to the attention of the election division staff, who promptly corrected the error. Mr. Shields said that this error was not at all the cause of the committee' delinquency, but simply a human mistake.

Mr. Shields said that it is hard for a small political action committee to find individuals to help run the committee. He stated that the committee did not wish to embarrass its treasurers through late filings and fines, and respected the democratic elections process and the opportunity to speak before the Commission today.

Mr. Shields repeated his apology, and asked for any leniency that the Commission could give the committee.

Mr. John noted that this committee had appeared two previous times before the Commission, and asked what were the circumstances concerning those violations. Mr. Shields said that it was the result of the same type of problem, such as new committee treasurers. In response to a question from Mr. John, Mr. Shields said that he had obtained the election division's calendar which contains the campaign finance report filing schedule.

The Chair thanked Mr. Shields for his testimony and closed the public hearing in this matter.

Mr. John noted that there were previous violations by this committee, but that he appreciated Mr. Shields's attendance at this meeting.

Mr. John moved, seconded by Mr. Long, that the proposed fine of Five Hundred Fifty Dollars (\$550), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Indiana McDonald's Operator PAC be reduced to Two Hundred Seventy Five Dollars (\$275), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**vii. Cause 04-4404-82 (Sierra Club PAC)**

The Chair opened the public hearing on Sierra Club PAC, Cause 04-4404-82, and recognized Mr. Bernard Glass.

Mr. Glass stated that the responsibility for filing this report falls on the treasurer of the Sierra Club, which is a volunteer position. He said that the treasurer is an attorney who has a small

practice, which has blossomed since the treasurer took on this responsibility. He added that during the time this report was due to be filed, matters came up in her practice that diverted her attention.

Mr. Glass remarked that he works for this attorney, and that the report was ready to be filed by the deadline. He said that the attorney had asked him to file this report, and the matter that had diverted her attention ended up diverting his attention as well. Mr. Glass stated that the report was filed with the election division on the next business day, and that he had hand delivered this report.

Mr. Glass said that because she had assumed this responsibility, this attorney will be reimbursing the Sierra Club for any fine imposed by the Commission against this committee. He added that this attorney has asked that another individual assume responsibility for serving as treasurer of this committee and for filing these reports. He concluded by noting that the committee's report has been filed late a couple of times before, and that this matter is beyond her control.

Mr. Glass stated that he understood that the responsibility for filing these reports has been shifted to a Sierra Club staff person, and that these filings should go more smoothly in the future. He said that the committee would appreciate any reduction in the proposed fine in the interest and spirit of volunteerism and since the attorney has agreed to reimburse the Sierra Club for the fine.

In response to a question from Mr. John, Ms. Thompson noted that the next business day after the Friday filing deadline was a Monday.

Mr. Glass stated that the report was ready to be filed, and that he was going to file it, and barring an unforeseen situation, the report would have been timely filed.

In response to a question from Mr. John concerning the committee's three previous violations, Mr. Glass said that they were the result of similar situations. Mr. Glass stated that when the attorney took on the position of treasurer, she had a nice quiet little practice, and was able to manage things very well without any staff. He added that as her practice grew, she became overwhelmed in a pretty quick fashion, and had asked that the responsibility for filing these reports be assumed by someone else.

The Chair thanked Mr. Glass for his testimony and closed the public hearing in this matter.

Mr. Long moved, seconded by Mr. John, that the proposed fine of One Hundred Fifty Dollars (\$150), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs be imposed against Sierra Club PAC.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

#### **viii. Cause 04-5016-92 (Yanos for State House)**

The Chair opened the public hearing on Yanos for State House, Cause 04-5016-92, and recognized Mr. Yanos.

Mr. Yanos stated that he was a candidate for Indiana State Representative, District 56, and was accompanied by Mr. James Wenning, his committee's treasurer. Ms. Thompson noted that Mr.

Yanos had provided the election division with several documents earlier today concerning this matter. Commission members accepted and reviewed the documents.

Mr. Yanos said that being a new candidate, he had made every effort to work within the recommended technologies in talking with election division staff. He was told that the preferred way to file the committee's report would be electronically. He added that the committee attempted to file the report electronically on April 15, 2004, and that being a little bit of a suspicious sort about the filing, he contacted the election division the next morning to inquire about the status of the committee's report. Mr. Yanos referred Commission members to the documents establishing that he made a telephone call to the election division on the morning of April 16, 2004.

Mr. Yanos stated that he was informed by the election division on that morning that the filing was there, and was received OK. He added that he proceeded to take a hard copy of the full 36 page report to the Henry County clerk's office, which was filed there in a timely fashion.

Mr. Yanos remarked that he had plenty of time to file the actual physical copy of the report with the election division in Indianapolis before the deadline, and would have done so if he had any inclination that the report had not been received electronically. He asked for the Commission's understanding and leniency based on those facts.

In response to a question from Mr. Long asking whether Mr. Yanos had sent the report in electronically, but the election division had not received the entire 36 page report, Ms. Potesta stated that there was a problem with the electronic transmission. She said that when a report is filed electronically, the election division receives a notice that the report has been sent. Ms. Potesta stated that when Mr. Yanos called on the morning of April 16, the election division responded that, yes, the report had been received. However, she noted that the election division had not yet physically opened the report since this call came in on the morning of the filing deadline. Ms. Potesta added that when the election division did open up the report, the election division notified the committee, which filed a copy of the report the following Monday morning.

Mr. John asked what the problem was with the electronic filing. Ms. Potesta responded that she did not remember. She noted that the election division is still in a transition period with the electronic filing. She added that this transmission sent the election division raw data instead of the actual report. Ms. Potesta stated that this problem has since been cleared up and the procedure is working wonderfully.

Ms. Robertson stated that the April 2004 pre-primary report was the first time the electronic filing method had been used. She added that the election division is trying to encourage electronic filing to reduce the incredibly expensive data entry costs for these reports.

The Chair thanked Mr. Yanos for his testimony and closed the public hearing in this matter.

Mr. Long moved, seconded by Mr. John, that this cause be dismissed.

Mr. Long stated that this would be an encouragement to everyone to file electronically, and thanked Ms. Potesta for explaining this to the Commission.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**ix. Cause 04-4409-83 (Greater Indianapolis Democratic Committee)**

The Chair opened the public hearing on Greater Indianapolis Democratic Committee, Cause 04-4409-83, and recognized Mr. Andy Miller, who stated that he was present on behalf of this committee.

Mr. Miller stated that the committee was delinquent, that he understands that the committee did violate the law, and that the committee will accept the penalty imposed by the Commission.

In response to a question from Mr. John concerning the cause for the report being late, Mr. Miller stated that it was the result of confusion by the committee's treasurer concerning deadline dates.

The Chair noted that this committee had appeared one previous time before the Commission. In response to a question from Mr. John, Ms. Thompson stated that the committee's previous violation had occurred in 1999.

The Chair and Mr. Long thanked Mr. Miller for his attendance and testimony. The Chair then closed the public hearing in this matter.

Mr. John moved that the proposed fine of Two Hundred Fifty Dollars (\$250), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Greater Indianapolis Democratic Committee be reduced to One Hundred Twenty Five Dollars (\$125), plus Two Dollars and Fifty Cents (\$2.50) in costs.

Mr. John stated that his motion was to acknowledge both that there had been a past violation by the committee, and the presence at the Commission meeting and apology by a representative of the committee. Mr. Long said that he would not second the motion, since this would be the fine assessed against the committee if the committee had written a letter. Mr. John responded that the problem was the committee's past violation, but that he was open to a friendly amendment. Mr. John then withdrew his motion.

Mr. Long said that he was not trying to nitpick here, but he had figured that the committee's fine would be \$100. He stated that this was to recognize that the committee had sent a representative to attend the meeting, and to recognize that it would not be profitable for the committee to repeat the violation.

Mr. Long moved, seconded by Mr. John, that the proposed fine of Two Hundred Fifty Dollars (\$250), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Greater Indianapolis Democratic Committee be reduced to One Hundred Dollars (\$100), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**x. Cause 04-5075-95 (Citizens for Everitt)**

The Chair opened the public hearing on Cause 04-5075-95 (Citizens for Everitt), and recognized Ms. Emily Everitt. Ms. Everitt presented a letter dated August 25, 2004 to the Commission concerning this cause. Commission members accepted and reviewed this letter.

Ms. Everitt stated that she is a first-time candidate, and was unfamiliar with campaign finance reporting procedures. She remarked that her account was opened and closed with zero dollars, and there was no money raised or spent by the committee. She said that she understood that this was her mistake, and apologized to the Commission.



In response to a question from Mr. Long, Ms. Everitt stated that she had been a candidate for state representative, and that being a candidate was a good experience.

The Chair thanked Ms. Everitt for her attendance and testimony, and then closed the public hearing in this matter.

Mr. Long moved, seconded by the Chair, that the proposed fine of One Thousand Dollars (\$1,000), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Citizens for Everitt be reduced to Two Hundred Fifty Dollars (\$250), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

Mr. Burdick then relinquished the chair to Ms. Huddleston, and left the meeting room.

**xi. Cause 04-4187-78 (Indiana Electric Association PAC)**

The Chair opened the public hearing on Indiana Electric Association PAC, Cause 04-4187-78, and recognized Ms. Kim Reed, who identified herself as the treasurer of this committee.

Mr. Long noted that the August 12, 2004 letter to the Commission from Mr. Ed Simcox states that Ms. Reed mailed this report on April 13, 2004. Mr. Long also noted that the certified mail return receipt was received back by this committee on May 7, 2004, and indicates that the election division received the mailing on May 20, 2004. Mr. Long said that he did not think this was correct.

Ms. Reed testified that this was correct, that she had received a certified mail receipt for this report on May 7, 2004, and that the receipt indicates that the election division received the mailing on May 20, 2004.

In response to a question from Mr. John asking when the election division actually received this report, Ms. Potesta stated that the election division received this report at 1:36 p.m. on April 16, 2004. Ms. Reed added that she had submitted a tracking report from the U.S. Postal Service stating that this mailing was delivered to the election division office at 10:39 a.m. on April 16, 2004. Mr. Long noted that this date and time of delivery was confirmed by the tracking report. The Chair joked that she thought that the Postal Service should be appearing before the Commission.

In response to a question from Mr. Long, Ms. Thompson stated that the election division file did not contain the envelope described by the tracking report, and that the filing deadline for this report was noon, April 16, 2004.

The Chair thanked Ms Reed for her testimony and closed the public hearing in this matter.

Mr. Long moved, based on the U.S. Postal Service tracking report indicating that the report was timely delivered, that this cause be dismissed. Mr. John seconded the motion.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Ms. Huddleston, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xii. Cause 04-4458-84 (Indiana Association of Homes & Services for the Aging PAC)**

The Chair opened the public hearing on Indiana Association of Homes & Services for the Aging PAC, Cause 04-4458-84, and recognized Mr. Jim Leich, who identified himself as the president of the Indiana Association of Homes & Services for the Aging.

Mr. Leich stated that the Association represents non-profit organizations that serve seniors. He added that he runs a small political action committee for the Association.

Mr. Leich said that the work for the report that was due April 16, 2004 was late due to an oversight on his part. He added that he was able to get the report in to the election division after a couple of days in the following week when he realized his mistake, and apologized for that.

Mr. Leich remarked that was thinking of turning over the responsibility for tracking this information to members of his staff, rather than trying doing so himself and not keeping up with the filing deadline dates.

In response to a question from Mr. John concerning the committee's three previous violations, Mr. Leich said that it reflected a continuing problem with these reports ending up on his desk and his realizing too late that he had missed the deadline.

In response to a question from the Chair, Ms. Thompson stated that the committee had missed two report filing deadlines in 2003, and one in 2002.

The Chair thanked Mr. Leich for his testimony and closed the public hearing in this matter.

Mr. Long moved, seconded by Mr. John, that the proposed fine of Two Hundred Fifty Dollars (\$250), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs be imposed against Indiana Association of Homes & Services for the Aging PAC.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Ms. Huddleston, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

Ms. Huddleston then relinquished the chair to Mr. Burdick.

**xiii. Cause 04-421-69 (Indiana's 9<sup>th</sup> Congressional Democrat Central Committee)**

Mr. Long noted that Mr. Doug Leatherbury had filed a motion on behalf of this committee on August 25, 2004 for a continuance of Cause 04-421-69. Commission members reviewed the motion.

The Chair moved, seconded by Mr. Long, that the motion for continuance be granted. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xiv. Cause 04-395-68 (United Mine Workers of America Coal Miners PAC)**

The Chair opened the public hearing on United Mine Workers of America Coal Miners PAC, Cause 04-395-68. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared five previous times before the Commission concerning campaign finance violations. The chair added that the election division had received a letter dated August 3, 2004 from this committee. Commission members proceeded to review this letter.

The Chair moved, seconded by Mr. John, that the Commission impose the full penalty of One Hundred Fifty Dollars (\$150), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against United Mine Workers of America Coal Miners PAC.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xv. Cause 04-1235-72 (I.B.E.W. Local Union 369 Political Action Committee)**

The Chair opened the public hearing on I.B.E.W. Local Union 369 Political Action Committee, Cause 04-1235-72. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared one previous time before the Commission concerning campaign finance violations.

Mr. Long moved, seconded by Mr. John, that the Commission impose the full penalty of One Hundred Fifty Dollars (\$150), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against I.B.E.W. Local Union 369 Political Action Committee.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xv. Cause 04-1822-73 (Kokomo Firefighters Political Action Committee)**

The Chair opened the public hearing on Kokomo Firefighters Political Action Committee, Cause 04-1822-73. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations.

Mr. Long moved, seconded by Mr. John, that the Commission impose the full penalty of One Thousand Dollars (\$1,000), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Kokomo Firefighters Political Action Committee.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xvi. Cause 04-1828-74 (International Chiropractors Association of Indiana)**

The Chair opened the public hearing on International Chiropractors Association of Indiana, Cause 04-1828-74. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared four previous times before the Commission concerning campaign finance violations. The chair added that the election division had received a letter dated August 9, 2004 from this committee. Commission members proceeded to review this letter.

Mr. Long moved, seconded by the Chair, that the Commission impose the full penalty of Five Hundred Fifty Dollars (\$550), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against International Chiropractors Association of Indiana.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xvi. Cause 04-4278-79 (5<sup>th</sup> District Democratic Central Committee)**

The Chair opened the public hearing on 5<sup>th</sup> District Democratic Central Committee, Cause 04-4278-79. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared one previous time before the Commission concerning campaign finance violations

Mr. John moved, seconded by the Chair, that the Commission impose the full penalty of Six Hundred Dollars (\$600), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against 5<sup>th</sup> District Democratic Central Committee.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xvii. Cause 04-4294-80 (Ulmer for State Representative)**

The Chair opened the public hearing on Ulmer for State Representative, Cause 04-4294-80. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations

Mr. Long moved, seconded by the Chair, that the Commission impose the full penalty of One Hundred Fifty Dollars (\$150), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Ulmer for State Representative Committee.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xviii. Cause 04-4359-81 (Valparaiso Firefighters PAC)**

The Chair opened the public hearing on Cause 04-4359-81 (Valparaiso Firefighters PAC). With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared two previous times before the Commission concerning campaign finance violations. The Chair also noted that the committee had sent a letter to the Commission dated August 17, 2004 concerning this matter. Commission members reviewed this letter.

Mr. Long moved, seconded by Mr. John, that the proposed fine of Three Hundred Dollars (\$300), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Valparaiso Firefighters PAC be reduced to Two Hundred Fifty Dollars (\$250), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xix. Cause 04-4472-85 (Hoosiers Against Crazy Taxes)**

The Chair opened the public hearing on Hoosiers Against Crazy Taxes, Cause 04-4472-85. With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had previously appeared five times before the Commission concerning campaign finance violations.

Mr. Long moved, seconded by Mr. John, that the Commission impose the full penalty of One Thousand Dollars (\$1,000), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Kokomo Firefighters Political Action Committee.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xx. Cause 04-4568-86 (Indiana's Finest Political Action Committee)**

The Chair opened the public hearing on Cause 04-4568-86 (Indiana's Finest Political Action Committee). With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared two previous times before the Commission concerning campaign finance violations. The Chair also noted that the committee had sent a letter to the Commission dated August 4, 2004 concerning this matter. Commission members reviewed this letter.

The Chair moved, seconded by Mr. John, that the proposed fine of Fifty Dollars (\$50), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Indiana's Finest Political Action Committee be reduced to Thirty Seven Dollars and Fifty Cents (\$37.50), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xxi. Cause 04-4921-87 (UA 157 Political Action Committee)**

The Chair opened the public hearing on Cause 04-4921-87 (UA 157 Political Action Committee). With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The Chair also noted that the committee had sent a letter to the Commission dated August 16, 2004 concerning this matter. Commission members reviewed this letter.

Mr. Long moved, seconded by the Chair, that the proposed fine of One Hundred Fifty Dollars (\$150), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against UA 157 Political Action Committee be reduced to Seventy Five Dollars (\$75), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xxii. Cause 04-4935-88 (Quality Through Progress Political Action Committee)**

The Chair opened the public hearing on Cause 04-4935-88 (Quality Through Progress Political Action Committee). With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had appeared one previous time before the Commission concerning campaign finance violations.

Mr. Long moved, seconded by Mr. John, that the Commission impose the full penalty of Fifty Dollars (\$50), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Quality Through Progress Political Action Committee.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xxiii. Cause 04-4938-89 (Midwest Leadership PAC)**

The Chair opened the public hearing on Cause 04-4938-89 (Midwest Leadership PAC). With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The Chair also noted that the committee had sent a letter to the Commission dated August 16, 2004 concerning this matter. Commission members reviewed this letter. The Chair remarked that the letter indicated that this committee had not received blank forms for filing mailed to committees by the election division.

The Chair moved, seconded by Mr. Long, that the proposed fine of Six Hundred Fifty Dollars (\$650), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Midwest Leadership

PAC be reduced to Three Hundred Twenty Five Dollars (\$325), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xxiv. Cause 04-4966-90 (Friends of Fishers Political Action Committee)**

The Chair opened the public hearing on Cause 04-4966-90 (Friends of Fishers Political Action Committee). With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations.

Mr. Long moved, seconded by Mr. John, that the Commission impose the full penalty of Fifty Dollars (\$50), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Friends of Fishers Progress Political Action Committee.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xxv. Cause 04-5008-91 (D & K PAC)**

The Chair opened the public hearing on Cause 04-5008-91 (D & K PAC). With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations.

Mr. Long moved, seconded by Mr. John, that the Commission impose the full penalty of Two Hundred Dollars (\$200), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against D & K PAC.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xxvi. Cause 04-5024-93 (Porter County Young Democrats)**

The Chair opened the public hearing on Cause 04-5024-93 (Porter County Young Democrats). With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The Chair also noted that the committee had sent a letter to the Commission dated August 16, 2004 concerning this matter. Commission members reviewed this letter.

Mr. John moved, seconded by the Chair, that the proposed fine of Two Hundred Fifty Dollars (\$250), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Porter County Young

Democrats be reduced to One Hundred Twenty Five Dollars (\$125), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xxvii. Cause 04-5066-94 (Ross J. Cook for State Representative)**

The Chair opened the public hearing on Cause 04-5066-94 (Ross J. Cook for State Representative). With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had not previously appeared before the Commission concerning campaign finance violations. The Chair also noted that the committee had sent a letter to the Commission dated August 24, 2004 concerning this matter. Commission members reviewed this letter.

Mr. Long moved, seconded by Mr. John, that the proposed fine of Three Hundred Fifty Dollars (\$350), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against Ross J. Cook for State Representative be reduced to One Hundred Seventy Five Dollars (\$175), plus Two Dollars and Fifty Cents (\$2.50) in costs.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**xxviii. Cause 04-5086-96 (White for State Senator)**

The Chair opened the public hearing on Cause 04-5086-96 (White for State Senator). With no person appearing to offer further testimony to the Commission, the Chair then closed the public hearing on this matter.

The Chair noted that this committee had previously appeared one time before the Commission concerning campaign finance violations.

The Chair moved, seconded by Mr. Long, that the Commission impose the full penalty of Six Hundred Dollars (\$600), plus Two Dollars and Fifty Cents (\$2.50) in mailing costs against White for State Senator.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

**8. G. New Campaign Finance Causes; Delinquent April 2004 Pre-Primary Supplemental Reports:**

**i. Cause 04-5028-97 (Committee to Elect Connie Basham)**

The Chair opened the public hearing on Committee to Elect Connie Basham, Cause 04-5028-97, and recognized Mr. Tony Albrecht, who identified himself as the treasurer for this committee.

Mr. Albrecht stated that he had previously taken the oath as a witness. Mr. Albrecht said that this committee had received two large contributions, one of which is the subject of this hearing,



and that when he had filled out the CFA-11 reporting form, he had misinterpreted the directions. He added that when he received the committee's second large contribution in June, he re-read the CFA-11 instruction forms and questioned his earlier understanding of the directions. Mr. Albrecht said that he then consulted with the election division, and learned that he should have filed the initial CFA-11 report in April, rather than in June. He stated that it was his mistake, and he apologized for the error.

Mr. Albrecht remarked that the May 2004 primary was uncontested for this candidate, and stated that as he understood the spirit of the CFA-11 reporting requirement, no other candidate was harmed in this case by the failure of the committee to file this report. Mr. Long stated that he was not sure that he understood what the spirit of the CFA-11 reporting requirement is, but he is still hoping.

Mr. Long stated that this was obviously a good faith effort, and the mistake was caught by the treasurer of the committee. He noted that the treasurer had contacted the election division concerning this matter, and that the committee had not previously appeared before the Commission concerning a campaign finance violation. He stated that this was similar to the cases of excess corporate contributions, where the corporation had caught the excess contribution and called it in, the Commission had let off the corporation due to self-policing. The Chair said that he wanted to encourage good internal compliance. Mr. Long thanked the Chair for his way of handling this matter and approaching it directly.

Mr. Long moved, seconded by the Chair, that this cause be dismissed.

The Chair stated that he agreed that the Commission should stand for people having good internal compliance programs that catch these violations without the Commission having to tell them. He said a lot of people get religion after they are caught, and he appreciates it when people find it beforehand.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick, Mr. John, and Mr. Long) and no Commission member voting "no," the motion was adopted.

#### **8. H. New Campaign Finance Causes; 2003 Excess Corporate and Labor Organization Contributions:**

##### **i. Cause 04-110 (Keramida Environmental, Inc.)**

The Chair opened the public hearing on Keramida Environmental, Inc., Cause 04-110.

Ms. Robertson stated that for purposes of disclosure, she wished to note that Mr. Becker is with the Winston Terrell Group, which has Keramida as a client. She added that she had spoken with Mrs. Keramida, who was going to be in Greece at the time of this meeting, and had requested a continuance.

Mr. Long moved, seconded by Mr. John, that the motion for continuance of this cause be granted.

There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. John, and Mr. Long), no Commission member voting "no," and Mr. Becker abstaining, the motion was adopted.

##### **ii. Cause 04-104 (Anheuser-Busch, Inc.)**

Mr. Burdick yielded the chair to Mr. Long, who opened the public hearing on Anheuser-Busch, Inc., Cause 04-104. Mr. Burdick stated that he had a conflict in this matter and would abstain from participating.

Ms. Potesta noted that a motion for continuance had been filed in this cause.

Mr. John moved, seconded by Mr. Long, that the motion for continuance of this cause be granted.

There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Becker, Mr. John, and Mr. Long), no Commission member voting "no," and Mr. Burdick abstaining, the motion was adopted.

**iii. Cause 04-106 (Standard Management)**

Mr. Burdick yielded the chair to Mr. Long, who opened the public hearing on Standard Management, Cause 04-106. Mr. Burdick stated that he had a conflict in this matter and would abstain from participating.

Ms. Potesta noted that a motion for continuance had been filed in this cause.

Mr. John moved, seconded by Mr. Long, that the motion for continuance of this cause be granted.

There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Becker, Mr. John, and Mr. Long), no Commission member voting "no," and Mr. Burdick abstaining, the motion was adopted.

**iv. Cause 04-105 (The Linder Company of Indiana, Inc.)**

Mr. Burdick relinquished the chair to Ms. Huddleston, and left the Commission meeting.

The Chair opened the public hearing on The Linder Company of Indiana, Inc, Cause 04-105. She recognized Ms. Sharon Hannasch, Vice-President for Finance, who was representing this company.

Ms. Hannasch stated that Mr. Linder had approached her about writing a contribution to this campaign in the amount of \$10,000, and that she had proceeded to write this check. She said that after writing this check, she had received correspondence indicating that the corporation had exceeded the maximum contribution it was allowed to make during a calendar year, along with a refund from the committee for \$5,000, the amount of the excess.

In response to a question from Mr John regarding how the corporation internally policed its compliance with these contribution limits, and what additional procedures may have been put in place since this violation, Ms. Hannasch stated that this was the only political contribution that the corporation had made, and that she is now monitoring the amounts of the checks which are written.

The Chair recognized Ms. Potesta who noted Commission members had received a packet of documents concerning this cause, with a cover memo from campaign finance staff dated August 26, 2004. Commission members proceeded to review these documents.

The Chair noted that the corporation had written this check on October 17, 2003, the Mitch Daniels for Governor Committee issued its refund on December 9, 2003. Ms. Hannasch stated

that the check was dated October 13, 2003, and had probably been received by the committee on October 17. She added that the refund check was dated December 9, 2003.

In response to a question from Mr. John, Ms. Hannasch stated that the corporation had received a notice of this violation from the election division. Mr. Long noted that it appeared that the corporation received this notice of violation after the committee had issued the refund. The Chair noted that the election division's documents indicated that the election division had sent a notice regarding the violation to this corporation on May 27, 2004.

In reviewing the election division documents, Mr. Long noted that the committee's report reflected both the receipt of the contribution and the refund of the excess amount to this corporation. He said that he understood that the campaign had issued this refund before anything was filed and the election division became aware of the violation. He added that this reflected self-policing, which was important to the Commission.

The Chair then closed the public hearing on this matter.

Mr. Long stated that he thought that The Linder Company was innocent in this matter, and he applauded the campaign for refunding the excess. He said someone on both ends should have caught the \$10,000 check instantly, but joked that this must be expected from a first time candidate.

Mr. Long moved that the matter be dismissed as a result of self-policing, and the appropriate response by the corporation. Mr. John seconded the motion.

Mr. John noted that this corporation did not have any previous violations concerning excess contributions.

Mr. Long said that Ms. Hannasch should explain to her company that she saved them \$15,000 by appearing before the Commission today.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Ms. Huddleston; Mr. John, and Mr. Long), no Commission member voting "no", the motion was adopted.

**v. Cause 04-101 (Contech Construction)**

The Chair opened the public hearing on Contech Construction, Cause 04-101. With no person appearing to provide further testimony, the Chair closed the public hearing on this cause.

The Chair recognized Ms. Potesta who noted Commission members had received a packet of documents concerning this cause, with a cover memo from campaign finance staff dated August 26, 2004. Commission members proceeded to review these documents.

In response to a question from Mr. Long, Ms. Potesta noted that this corporation had appeared two previous times before the Commission concerning excess corporate contributions. Ms. Potesta added that the excess contribution made in this matter had been refunded by the Indiana Democratic Party state committee.

In response to a question from Mr. Long as whether the election division had caught this excess contribution, Ms. Potesta stated that the committee had caught this excess contribution and had refunded the money. She added that when the election division performed an audit, the election division then notified the corporation that a violation had occurred.

Mr. Long stated that this cause appeared to be the same as the last one, except that the corporation had committed two previous violations. Mr. John noted that the refund had occurred significantly later.

In response to a question from Mr. John, Ms. Thompson indicated that she did not have information immediately available concerning the amounts of the previous excess contributions made by the corporation.

Mr. Long stated that he had a concern as a practical matter, without regard to whom the contributions were made to, that the contributions in this cause were made at two different times. He noted that the corporation made a \$400 contribution on August 26, 2003, and a \$5,000 contribution on September 30, 2003. Mr. Long said that the problem was that this corporation obviously did not have any internal controls to monitor its contribution limitations. He stated that this problem had happened before, and that he was not justifying it since the corporation should have taken action to correct it.

Mr. Long noted that it was not as if the corporation had sat down and written a check for \$5,400. Instead, someone at the corporation had agreed to make the \$5,000 contribution. He said that he did think the Commission should impose a penalty since this corporation had previous excess contribution violations.

Mr. John moved that, based on the previous offenses by this corporation, and the corporation's evident failure to implement internal controls following the previous offenses, that the Commission impose a fine against Contech Construction, equal to the amount of the excess contribution, meaning Four Hundred Dollars (\$400).

Mr. Long noted that the penalty in this case could be a maximum of One Thousand Twelve Hundred Dollars (\$1,200), so the Commission was giving this corporation a break. Mr. Long seconded the motion.

In response to a question from the Chair, Ms. Thompson indicated that there were no additional costs associated with this cause.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Ms. Huddleston; Mr. John, and Mr. Long), no Commission member voting "no", the motion was adopted.

**vi. Cause 04-102 (Paul I. Cripe, Inc.)**

The Chair opened the public hearing on Paul I. Cripe, Inc., Cause 04-102. With no person appearing to provide further testimony, the Chair closed the public hearing on this cause.

The Chair recognized Ms. Potesta who noted Commission members had received a packet of documents concerning this cause, with a cover memo from campaign finance staff dated August 26, 2004. Commission members proceeded to review these documents.

The Chair noted that the corporation had made two contributions to Hamilton County Republican Central Committee, one for \$1,000 and the other for \$1,400, for a total of \$2,400, which exceeded the \$2,000 contribution limit. Mr. Long said that this was similar to the preceding case, in which the excess was refunded before the matter came to the attention of the election division.

The Chair noted that this corporation did not have any previous violations concerning excess contributions. Mr. John remarked that this excess was refunded within about three weeks after receipt. The Chair said that the excess contribution had been made in September 2003, and then refunded by the committee to the corporation in October 2003.

Mr. Long suggested that the corporation should receive the benefit of not having had a previous violation, but should have appeared before the Commission to explain.

Mr. Long moved, seconded by Mr. John, that the Commission impose a civil penalty against Paul I. Cripe, Inc. in the amount of One Hundred Dollars (\$100).

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Ms. Huddleston; Mr. John, and Mr. Long), no Commission member voting "no", the motion was adopted.

**vii. Cause 04-107 (Ace Mortgage Funding, Inc.)**

The Chair opened the public hearing on Ace Mortgage Funding, Inc., Cause 04-107. With no person appearing to provide further testimony, the Chair closed the public hearing on this cause.

The Chair recognized Ms. Potesta who noted Commission members had received a packet of documents concerning this cause, with a cover memo from campaign finance staff dated August 26, 2004. Commission members proceeded to review these documents.

The Chair noted that the corporation had made a contribution of \$2,500 to Representative Burton's committee, which was \$500 in excess. In response to a question from Mr. John concerning whether this was self-policed, Mr. Long said that no, the election division had caught the excess contribution. The Chair noted that the committee had refunded the excess contribution.

Mr. John stated that this corporation did not have any previous violations concerning excess contributions. Mr. Long noted that there appeared to be an error in the election division's cover memo regarding the dates in this matter. Commission members discussed the sequence of dates set forth in the division's cover memo, and determined that the entry for when the election division notified Representative Burton's committee should read "May 27, 2004", not "May 27, 2003."

Mr. John remarked that although the corporation did not have a previous excess contribution violation, the corporation did not self-police this matter, and should have appeared before the Commission to explain.

Mr. John moved, seconded by Mr. Long, that the Commission impose a civil penalty against Ace Mortgage Funding, Inc. in the amount of Seven Hundred Fifty Dollars (\$750).

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Ms. Huddleston; Mr. John, and Mr. Long), no Commission member voting "no", the motion was adopted.

**viii. Cause 04-108 (The Prairie Group)**

The Chair opened the public hearing on The Prairie Group, Cause 04-108. With no person appearing to provide further testimony, the Chair closed the public hearing on this cause.

The Chair recognized Ms. Potesta who noted Commission members had received a packet of documents concerning this cause, with a cover memo from campaign finance staff dated August 26, 2004. Commission members proceeded to review these documents.

In response to a question from Mr. John, Mr. Long noted that the excerpted page from the Democratic State Committee report included with the election division cover memo indicated that the Committee refunded the excess contribution of \$500 on April 17, 2003.

The Chair noted that this corporation had appeared before the Commission for two previous violations concerning excess contributions. Mr. Long noted that in this case the party committee had caught the excess contribution, but that the corporation had not appeared before the Commission at today's hearing.

Commission members discussed the penalties imposed in previous causes, and determined that Contech Construction was the closest precedent to this matter.

Mr. Long moved, seconded by Mr. Becker, that the Commission impose a civil penalty against The Prairie Group in the amount of Five Hundred Dollars (\$500).

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Ms. Huddleston; Mr. John, and Mr. Long), no Commission member voting "no", the motion was adopted.

Ms. Huddleston then relinquished the chair to Mr. Burdick. Commission members thanked Ms. Huddleston for her service at this meeting.

**ix. Cause 04-100 (Family Express Corporation)**

The Chair opened the public hearing on Family Express Corporation, Cause 04-100. With no person appearing to provide further testimony, the Chair closed the public hearing on this cause.

The Chair recognized Ms. Potesta who noted Commission members had received a packet of documents concerning this cause, with a cover memo from campaign finance staff dated August 26, 2004. Commission members proceeded to review these documents.

Mr. Long stated that it appeared that the House Republican Campaign Committee had caught the excess corporate contribution in this case, and refunded the excess. He noted that the corporation had never appeared before the Commission for any previous violation concerning excess contributions.

Mr. Long said that to be consistent with the Commission's previous rulings in causes, that the case of Paul I. Cripe, Inc. appeared to be most similar to this one, in that there were no previous violations, and that this one was caught internally. He added that the Commission had imposed a fine of \$100 in the *Cripe* case.

.Mr. Long moved, seconded by Mr. John, that the Commission impose a civil penalty against Family Express Corporation in the amount of One Hundred Dollars (\$100).

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick; Mr. John, and Mr. Long), no Commission member voting "no", the motion was adopted.

**x. Cause 04-103 (Walgreens)**

The Chair opened the public hearing on Walgreens, Cause 04-103. With no person appearing to provide further testimony, the Chair closed the public hearing on this cause.

The Chair recognized Ms. Potesta who noted Commission members had received a packet of documents concerning this cause, with a cover memo from campaign finance staff dated August 26, 2004. Commission members proceeded to review these documents.

In response to a question from Mr. Long, Ms. Thompson stated that the Smith for Senate Committee had refunded the entire contribution from Walgreens to the committee, not merely the excess amount. Mr. Long noted that the contribution had been refunded in its entirety before the election division was aware of the excess. Mr. John stated that this case would appear to be in line with *Family Express Corporation* case.

Mr. Long moved, seconded by Mr. John, that the Commission impose a civil penalty against Family Express Corporation in the amount of One Hundred Dollars (\$100).

There being no further discussion, the Chair called the question, and declared that with three members voting “aye” (Mr. Becker, Mr. Burdick; Mr. John, and Mr. Long), no Commission member voting “no”, the motion was adopted.

**xi. Cause 04-109 (Overhead Door Company of Indianapolis, Inc. )**

The Chair opened the public hearing on Overhead Door Company of Indianapolis, Inc., Cause 04-109. With no person appearing to provide further testimony, the Chair closed the public hearing on this cause.

The Chair recognized Ms. Potesta who noted Commission members had received a packet of documents concerning this cause, with a cover memo from campaign finance staff dated August 26, 2004. Commission members proceeded to review these documents.

Mr. Long stated that it appeared to be the same situation as in other causes when the election division did not catch the excess contribution violation. He noted that this corporation had self-policed this matter, and had never appeared before the Commission for any previous violation concerning excess contributions.

Mr. Long moved, seconded by Mr. John, that the Commission impose a civil penalty against Family Express Corporation in the amount of One Hundred Dollars (\$100).

There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Becker, Mr. Burdick; Mr. John, and Mr. Long), no Commission member voting “no”, the motion was adopted.

**9. Voting System Certification Applications:**

The Chair noted that in a document submitted by the Co-Directors to the Commission, and reviewed previously in this meeting, the Co-Directors recommended that the following voting system certification applications be tabled:

- A. MicroVote direct record electronic Infinity voting panel firmware upgrade (Version 2.13)**
- B. Voting Technologies International direct record electronic VOTWare software upgrade (Version 3.6.10)**
- C. Sierra Election Systems optical scan ballot marking device**

- D. UniLect Corporation “The Patriot” direct recording electronic voting system.**
- E. Avante International Technology, Inc. Vote-Trakker direct record electronic voting system, version 4.76.**

Mr. Long moved, seconded by Mr. John, to table these applications. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Becker, Mr. Burdick; Mr. John, and Mr. Long), no Commission member voting “no”, the motion was adopted.

The Chair noted that the remaining pending applications were all submitted by Election Systems & Software (ES&S). The Chair recognized Mr. King, who called the Commission’s attention to the memo dated August 24, 2004 from the co-directors concerning each of these applications, which is included by reference in these minutes.

Mr. King stated that the ES&S applications listed in the agenda fall into one of two groups, with the first group being applications which were filed with the Commission before the Commission’s March 10, 2004 meeting: .

**G. Election Systems & Software direct record electronic iVotronic firmware upgrade (Version 7.4.5.0)**

Mr. King noted that after the March 10, 2004 Commission meeting, ES&S representatives advised the election division that ES&S is not pursuing certification of this voting system upgrade since version 7.4.5.0 has been superseded by the software and tabulation programs referenced in the ES&S Unity 2.5 application. Mr. King noted that the Unity 2.5 applications make up the second group of applications submitted by ES&S.

Mr. King stated that the co-directors recommended, subject to testimony or written confirmation of these facts by ES&S, that ES&S be permitted to withdraw this application, and remove the application from the Commission’s agenda.

**H. Election Systems & Software optical scan Model 650 (Version 1.1.9.1)**

Mr. King added that the same situation applied with regard to the Model 650 version 1.1.9.1 centralized tabulation system application, since this version has been superseded by the software and tabulation programs referenced in the ES&S Unity 2.5 application.

Mr. King stated that the co-directors recommended, subject to testimony or written confirmation of these facts by ES&S, that ES&S be permitted to withdraw this application, and remove the application from the Commission’s agenda.

**I. Election Systems & Software direct record electronic iVotronic firmware upgrade (Version 8.0.0.0)**

Mr. King added that the same situation applied with regard to the direct record electronic iVotronic firmware version 8.0.0.0, since this version has been superseded by the software and tabulation programs referenced in the ES&S Unity 2.5 application.

Mr. King stated that the co-directors recommended, subject to testimony or written confirmation of these facts by ES&S, that ES&S be permitted to withdraw this application, and remove the application from the Commission’s agenda.



**J. Election Systems & Software ERM upgrade 6.4.2.0**

Mr. King added that the same situation applied with regard to the ES&S Election Report Management version 6.4.2.0, since this version has been superseded by the software and tabulation programs referenced in the ES&S Unity 2.5 application.

Mr. King stated that the co-directors recommended, subject to testimony or written confirmation of these facts by ES&S, that ES&S be permitted to withdraw this application, and remove the application from the Commission's agenda.

Mr. King added that the remaining applications on the agenda had been submitted by ES&S to the election division earlier this month, and came under the heading of Unity 2.5. These applications consisted of the following:

- K. Election Systems & Software direct record electronic iVotronic firmware 9.0.0.0 (Unity 2.5 component)**
- L. Election Systems & Software Model 100 precinct tabulator optical scan firmware version 5.1.0.0 (Unity 2.5 component)**
- M. Election Systems & Software Model 650 centralized mark sense tabulator, version 2.0.0.0 (Unity 2.5 component)**
- N. Election Systems & Software Data Acquisition Manager (DAM) version 6.0.0.0; Election Reporting Manager (ERM) version 7.0.0.0; and Hardware Programming Manager (HPM) version 5.1.0.0 (Unity 2.5 software components).**

The Chair noted that representatives from ES&S were present. Mr. Simmons administered the oath to Mr. Groh and Mr. McGinnis.

The Chair asked Mr. Groh to confirm the information provided by Mr. King regarding the withdrawal of the first group of four applications by ES&S, to provide information regarding the status of the Unity 2.5 applications, and to provide information regarding the plans of ES&S to deal with the issues raised previously regarding Henry, Johnson, Vanderburgh and Wayne counties.

Mr. Groh stated that he serves as a senior vice-president and corporate officer of ES&S, in Omaha, Nebraska. He said that with regard to Co-Director King's remarks, ES&S would like to have the Commission act on the most recent set of applications from ES&S. He added that all of the preceding applications were for versions which, through the independent testing authority process, required ES&S to assign a new version number to the product to recognize the change in the prior versions of these products. Ms. Groh said that these version numbers are a method for managing changes that are made within these systems.

Mr. Groh noted that ES&S had received a letter from the election division, dated August 19, 2004, confirming that the group of applications comprising the Unity 2.5 system had been filed, and that ES&S would like to have that group of filings be the one that stands before the Commission for approval. In response to a question from Mr. Long, Mr. Groh stated that ES&S wished to withdraw the following applications:

**Election Systems & Software direct record electronic iVotronic firmware upgrade (Version 7.4.5.0).**

**Election Systems & Software optical scan Model 650 (Version 1.1.9.1)**

**Election Systems & Software direct record electronic iVotronic firmware upgrade (Version 8.0.0.0)**

## **Election Systems & Software ERM upgrade 6.4.2.0**

In response to a question from the Chair, Mr. Groh said that these versions had not been used in Indiana while they were uncertified, except for iVotronic version 7.4.5.0, which the Commission had permitted to be used in the May 2004 primary.

In response to a question from Mr. Long, Mr. McGinnis stated that version 7.4.5.0 was also used in the November 2003 municipal election.

In response to a question from Mr. Long, Mr. Groh stated that the high speed absentee counter, the Model 650, had been sold to Marion County, but was never used in Marion County. In response to a question from Mr. Long, Mr. McClamroch stated that Marion County does not have the Model 650 any longer. In response to a question from Mr. Long about whether Marion County had returned the Model 650 to ES&S, Mr. McGinnis said that Marion County had decided to process its absentee ballots at the precincts using the Model 100s.

Mr. Long said that he understood that the only one of the products listed at these applications ES&S which ES&S had not marketed in Indiana was version 8.0.0.0. He added that he understood that version 8.0.0.0 was the next version of 7.4.5.0. Mr. Groh responded that this was correct, and that version 8.0.0.0 was managing these changes as it was going through the certification process.

Mr. Groh said that every time E&S receives a change request for the product, ES&S has to assign a new version number to the product. He added that otherwise, there would be no way to distinguish between a prior certification to an ITA from the version the ITA is currently working on.

In response to a question from the Chair, Mr. Groh stated that the Commission would never receive an ITA report concerning version 7.4.5.0, or any of the versions in the first set of applications, since these versions had been superseded by the changes since made by ES&S to this product.

In response to a question from Mr. Long, Mr. Groh said that these versions would not comply with 2002 FEC Standards. Mr. Groh added that in developing the version 9.0.0.0, the independent testing authorities provide recommendations to ES&S, which result in ES&S making changes to the operating system software and firmware. He remarked that E&S gives this changed system a new version number to manage these changes and also to comply with independent testing authority requirements. He said that version 9.0.0.0 had been generated from version 7.4.5.0, but many changes had been made to the system to make it acceptable under 2002 Standards.

In response to a question from Mr. John, who asked if all of these changes to version 9.0.0.0 were the results of suggestions received through the independent testing authority process, Mr. Groh said these changes fall into one of two groups. First, some changes are more the result of the "art" side of the process, rather than the "science" side of the process. In a case of this sort, an ITA official may say that they accept the system's function and understands what it does, but the ITA official would prefer to have the system perform this function in a different way. Secondly, there are cases where the 2002 system requirements are definitely different than the 1990 standards, and that as a result the voting system features may have to be upgraded dramatically to meet the 2002 standards.

The Chair stated that he had been briefed by Mr. Groh and ES&S's counsel regarding version 9.0.0.0, and he had kept tabs on this. He said there is a \$10 million bond outstanding that ES&S agreed to as part of the decision made by the Commission concerning the May 2004 primary.

He noted that the \$10 million bond is there to cover the expenses of supplying replacement equipment in case ES&S cannot live up to ES&S's contractual obligation or provide other certified voting equipment in the November 2004 general election.

The Chair remarked that he had sent a letter earlier this month to several county circuit court clerks reminding them to have their own contingency plans in place for the November 2004 election in case version 9.0.0.0 does not get certified. He added that he had sent ES&S a similar letter, asking what ES&S would do if this version did not get certified.

The Chair stated that he was speaking personally and for himself alone, but his position was that he would not agree to do what the Commission did for the May 2004 primary, and permit uncertified voting equipment to be used in the November 2004 general election. The Chair thanked Mr. Groh for briefing him regarding the status of this application with the ITA, and ES&S's alternative plans for each of these counties.

Mr. Long said that the Chair had done a really good job of following through on this matter, and using his expertise to see that this bond was properly worded and in place, and thanked the Chair for this work. Mr. Long added that in the interest of disclosure, he wished to state that he had met with Mr. Groh a short time ago for a brief briefing regarding this matter. Mr. Long stated that he had suggested to Mr. Groh that he meet first with the Chair, since the Chair was coordinating this matter on behalf of the Commission. He said that he made this statement so that the Chair, fellow Commission members, and the public would be aware that he had received some information to try to stay abreast of this situation.

Mr. Long likewise confirmed, speaking only for himself, that he would probably be very reluctant to vote for any similar treatment in the November 2004 general election to permit what was used in the May 2004 primary.

The Chair then requested Mr. Groh to brief the Commission regarding the status of these applications. Mr. Groh thanked the Commission, and stated that ES&S has exactly the same goal that the Commission has, that the four counties concerned here have, and all the counties in Indiana have, and that is on November 2, 2004 they want to run an election and know that the election will be secure, accurate, and reliable, and most importantly that the election is done on a certified election voting system. He said that this is exactly what ES&S has plans to do and intend to do.

Mr. Groh stated that ES&S has looked at three things that ES&S needs to focus on three things, First, the obligation of ES&S to the Commission, with a date of October 1, 2004, to meet the certification deadline and that is the application that ES&S has submitted to the Commission. He said that ES&S has put a tremendous amount of resources at its company to that effect to work on this process very diligently for the last several weeks. Mr. Groh said that ES&S was at the tail end of that process, and will be meeting with the ITA groups. He added that the official ITA evaluation takes place after the vendor has gone through all of the exchange of data back and forth with the ITA. He said that ES&S is at that point, and has been sharing with the Commission a certification road map that takes ES&S up to the October 1 deadline. Mr. Groh indicated that the Commission will be receiving, and can view from ES&S updates regarding the process, since there are now daily changes in activity taken place. He said that earlier these changes might have taken a week to take place. Mr. Groh stated that uppermost in ES&S's mind was to get the certification process completed by the October 1, 2004 deadline as ES&S has committed to the Commission.

Mr. Groh remarked that this timeline has been presented to the Commission in a document that the Chair had asked ES&S to provide concerning optional plans by ES&S, but that this document also included certification information. He said that this information is set forth on

almost the last page of this document. A copy of this document is incorporated by reference in these minutes.

Mr. Groh noted that Commission members would understand that many entities are involved in the voting system certification process. He said that in addition to ES&S, there are several ITA organizations that ES&S works with, and that things that ES&S does not anticipate will happen may happen. He noted that, as a result, ES&S is working on dual parallel implementation paths.

Mr. Groh said that one path would be to implement version 9.0.0.0 as part of a certified Unity 2.5 voting system, which would be certified in time for the November 2004 general election. He added that ES&S continues to work on this, and will have a decision for the Commission before October 1, 2004. Mr. Groh said that if this were not to pass, or ES&S failed for some reason on that, then ES&S is working on a parallel implementation plan for each of the counties that would involve using a certified optical mark read precinct tabulation system. He noted that both plans were presented to the Commission in this document.

Mr. Groh remarked that the document addresses each county individually to show how the iVotronic implementation plan would be rolled out in that county, and in parallel to that, how ES&S would do the Model 100 in that county. He said that to ensure the confidence that the counties had in ES&S when the counties originally purchased voting equipment from the company, and to continue the good will that ES&S had earned over the years, ES&S is meeting with these counties on a very regular basis. Mr. Groh indicated that he had personally met with each of the counties at least two times, and in some cases more frequently than that.

Mr. Groh stated that the counties have seen and received the same document that ES&S has presented to the Commission. He indicated that the clerks of the four counties involved, and their staffs, have met with the ES&S project management team concerning their county's specific implementation plan to make certain that the dates were accurate, and that ES&S is meeting the county's expectations, and that this plan would be acceptable and workable for the county.

Mr. Groh indicated that ES&S has been giving the counties a daily update regarding the system certification, because ES&S understands that these counties want to know with certainty what they will be doing, and that this knowledge permits the counties to make better decisions and to feel in control. He added that this communication has been going on for several months, but that the level of communication by ES&S to the counties has been increased or enhanced over the last three weeks.

Mr. Groh thanked the Commission for the opportunity to share these plans, and would be happy to answer questions from Commission members. He noted that the circuit court clerks from the four counties were also present at the Commission's meeting, and that the Commission may wish to ask those clerks for their opinion regarding how this process has been working with them. He concluded by stating that ES&S was focusing on the certification process, and was on target to meet the October 1, 2004 deadline with a fairly high degree of certainty. He said that it was the uncertainty he could not predict. Mr. Groh said that over the next two or three weeks, the ITAs would be in Omaha doing the certification event, and that he may be surprised, but that ES&S will offer no surprise to the Commission because ES&S has this optional solution.

Mr. Groh said that ES&S is doing the equivalent of building the Commission two houses, and that the Commission will be able to move into one house or the other, whichever one is effectively needed, on election day. He added that the clerks in each of the counties are aware of this dual strategy. Mr. Groh said he is printing ballots as if he would be running the election on a paper ballot system along with developing ballots as if voting would be done on a direct record electronic touchscreen voting system. He said that ES&S will do all of the work in the

timeframes that will be required to get to November. He emphasized that there is no catch to say that ES&S ran out of time.

In response to a question from Mr. Long concerning the Model 100 and the Model 650, Mr. Groh stated that the Model 100 was a precinct read optical scan voting system, which read ballots at the precinct level, which would be the previously certified system used by ES&S in Indiana. Mr. Long asked where in Indiana the Model 100 voting system was used. Mr. Groh and Mr. McGinnis responded that the Model 100 was used in Hancock, Marion, St. Joseph, and Vigo counties.

Mr. Long stated that he received a copy of an *Indianapolis Star* article from election division staff, and understood that Marion County had touchscreen systems sitting here also.

Mr. Groh responded that this was a very good question, and that he would attempt to frame some answers around it. He said that within the Help America Vote Act one of the major requirements for all counties to do was, for the first time, to provide a voting system that would allow visually or physically impaired persons to vote unassisted. Mr. Groh noted that in the past, the voting public at large handled a paper based voting system, but this required assistance for people who had visual impairments or some other physical impairment. He added that a touchscreen direct record electronic voting system for the first time allows these voters to vote unassisted by listening to their ballot being read to them.

Mr. Groh remarked that Marion County is effectively using the paper based voting system for their precinct voting and allowing the voters who request or would need assistance on a paper ballot to vote on a touchscreen system. Mr. Groh stated that Marion County would have one of these units in every precinct.

Mr. Long said that it seemed to him, according to the article from May 2004, that the touchscreen systems were the same systems the Commission was dealing with here, and were not certified and not usable. Mr. Groh responded that these were the iVotronics, and is not a certified voting system that could be used until ES&S goes through the certification process.

Mr. Long said that he would like to hear from the clerks when the Chair felt it was appropriate to recognize them.

The Chair recognized Mr. John, who thanked Mr. Groh for his remarks to the Commission. Mr. John said that he had to reiterate that (although this was his first Commission meeting as anything other than a proxy), the statute to him is very clear. He said that if this voting system is not certified by any independent testing authority, he would not be moved to vote to permit this voting system to be used at all. Mr. John applauded ES&S for the plans that had been provided to the Commission, but that the devil is in the details of what ES&S actually implements, versus what ES&S plans. He asked what made ES&S think that since it had four voting system versions going through testing at independent testing authority, but not yet certified, that will now be in the next report.

Mr. Groh responded that it was not that the systems have not been certified; he said that certification is a process or series of events where a voting system vendor submits things in small little increments, rather like chapters in a book, to an ITA. He said that a voting system vendor submits a "chapter" to an independent testing authority which provides the vendor with comments back concerning this chapter and then the vendor makes changes or corrections to the chapter, according to what the ITA has asked the vendor to do. Mr. Groh said that going through the final certification was the "whole end-to-end piece", which included all of the components in the voting system from end to end.

Mr. Groh remarked that when a vendor begins certification to a brand new specification, which is what the 2002 Standards are, the vendor begins to receive at the front end of this certification process a wave of changes or correction tickets from the ITA. He added that these are notations made by the ITA, which the ITA would like the vendor to address, to have the voting system perform this function in a different way. He said that when a vendor begins at the front end of the certification process, the ITA ticket level is extremely high. He added that over time, the vendor reduces these tickets, since the vendor is taking care of those issues. He remarked that ES&S is down to the point, over the last three weeks, where no tickets have been coming back to ES&S from the ITA in response to chapters resubmitted to the ITA with requested changes having been made. Mr. Groh said that every voting system "chapter" has been through multiple turns with the ITA, and all corrections have been made.

Mr. Groh stated that after the corrections have been made, E&S sends the version back to the ITA and asks the ITA to look at the *delta*, the differential between the last submission and the new submission. He said that ES&S is now to the point where ES&S has received no further exclusions or comments from the ITA. Mr. Groh indicated that when the vendor gets to that point, the vendor advises the ITA that the vendor is now ready to have the ITA come in and do the end to end review of the entire process used by the voting system. He noted that getting to that point is what causes the vendor to have the version number changes. He said that each time a change is made in one of the voting system components, in any of these models, in either the firmware or the software, then ES&S assigns a new version number to the product. He added that as of August 20, 2004, the ITA has the complete ES&S system.

Mr. Groh stated that the voting system was going through two weeks of *ad hoc* regression testing, which was a new component, which had never been done in the past by the ITA, and which ES&S was informed of about a month ago. He said that was a changing target that the vendor was hitting. Mr. Groh indicated that ES&S begins full testing at the ITA on September 7, 2004. He said that typically, this was about a ten day event. He remarked that the ITA was coming to Omaha since that would make it easier to have all of the facilities and all of the hardware and software product development personnel present.

Mr. Groh said that this was why he was confident that ES&S was coming down to the tail end of the certification process. He indicated that although the Commission may view this as ES&S not having passed the certification yet, for ES&S the process of getting through the certification has been very normal in what ES&S has done.

Mr. John asked if Mr. Groh was saying that there was no way that the system that was used in the May 2004 primary could ever obtain ITA certification. Mr. McLamroch pointed out that the version that was used in the May 2004 primary has received ITA approval, and is used in many jurisdictions throughout the country, but that this ITA approval was based on the 1990 Standards, as opposed to the 2002 Standards. Mr. McClamroch responded that the version used in the May 2004 primary could not receive approval to 2002 Standards.

The Chair asked ES&S for information concerning the flexibility for training clerks and poll workers using the "building two houses" approach. Mr. Groh responded that training was one of the most important components of any project that is implemented. He added that typically training is broken down into three components: first, the voter, because the voter is the one who has to interact with the system. He noted that county election officials have seen that there would be very little impact on voters, since there would be very little difference in the voting process from what the voter had seen before, compared to what the voter will see today; secondly, the poll worker, who may have to do some things differently from what they have done in the past because the voting system had changes that were necessary for the system to obtain certification; and thirdly, the election administrator and the others who will conduct training of other people, and manage that training.

Mr. Groh said that ES&S has implemented a plan to have training take place during appropriate time frame in front of the election, to allow for whichever way ES&S goes with regard to the use of voting systems, to provide for voter outreach, poll worker training, and election administrator training. He remarked that the window of training was there, and will start for the public and poll workers sometime in October, and for the election administrators, will begin before October.

The Chair asked that in the absence of the problems that ES&S had experienced in completing the certification process, would this be the time schedule for conducting this training anyway. Mr. McGinnis responded that this was correct, and that there was nothing abnormal about this training period.

In response to a question from the Chair, Mr. Groh noted that the circuit court clerks from Henry, Johnson, Vanderburgh, and Wayne counties were present.

The Chair recognized the circuit court clerks who were present for their comments. He added that he understood that somehow there would be certified equipment available for the November election since there were Model 100s in Indiana set aside to meet sufficient to meet every requirement. Mr. McGinnis responded that this was correct.

The Chair recognized Ms. Abell, the circuit court clerk of Vanderburgh County. Ms. Abell stated that she was accompanied by the other members of the county election board, Mr. Mark Foster and Mr. Donald Bell; her chief deputy, Ms. Carla Hayden, and her elections deputy, Ms. B.J. Farrell. Ms. Abell said that those attending had come from Vanderburgh County to hear what ES&S had to say about what had occurred.

Ms. Abell said that she has been extremely pleased with the events that have occurred during the last three weeks since she had feared that the county election board would have to be setting forth a contingency plan themselves, which meant that she would probably have to do that and that she did not want all of that work on herself. She added that she was very happy that ES&S has come forward and has given Vanderburgh County an excellent contingency plan for use if the iVotronics were not certified. She said that she stated that Vanderburgh County could conduct the election in the timeframe presented, and had made a couple of adjustments and had asked ES&S to do a couple of things earlier than they had scheduled. She remarked that all in all, Vanderburgh County now had as good a relationship with ES&S as the county has had in the last 30 years.

Mr. Long said that he understood that Ms. Abell was very pleased with the mechanical features of the touchscreen voting systems that Vanderburgh County used in the May 2004 primary, and that she had sent a note to Commission members regarding that. He added that he thought this was very positive, and that as he understood, the 9.0.0.0 version goes right into that hardware. He said that this had been his big concern, and that he knew that the Vanderburgh County folks were sharp, and would know how to do these things. Mr. Long said he understands that it takes about three cycles of elections for people to get really comfortable with their voting system so it is not quite so intimidating. He said he was sincerely hopeful, as he was sure Vanderburgh County officials were, that since the county had implemented a new system in the May 2004 primary, that the same type of voting system could be used in November.

Ms. Abell responded that she hoped the experience in the fall would be like the primary voting experience as reported in the local media, which ran a headline the day after the primary election reading "A Perfect Touch", since Vanderburgh County experienced no absolutely problems with using this voting system. She said that the county had audited its records after the primary election to compare the number of people who had signed the precinct poll books with the number of votes that came out of the iVotronics, and found that they were absolutely

perfect. She stated that this was probably the first time since she had been clerk that this had happened. Ms. Abell said it was a very moving experience to watch Mr. Walt Kearney vote for the first time in many years by himself since he had lost his eyesight to diabetes. She said that Vanderburgh County would certainly like to see this equipment used, but that the County understood the Commission's position and was not asking the Commission to let the County use this system if the system was not certified. She stated that Vanderburgh County would be happy to use the Model 100s if they had to, but would love to use the other system depending upon the ITA's report.

The Chair recognized Jill Jackson, the circuit court clerk of Johnson County, who said that she was accompanied by the former Johnson County Recorder, Ms. Jean Harmon, who currently serves as the chair of the Johnson County Election Board.

Ms. Jackson stated that Johnson County had taken a little bit of a different approach. She said that the County did not feel, with the history that the County had, that the County could sit and wait for the certification to happen, and that the County chose to take a more proactive approach. She said that on August 3, 2004, the Johnson County Election Board voted to give ES&S an August 20, 2004 deadline to obtain voting system certification for the iVotronic for use in the November 2004 general election. Ms. Jackson said that this did not occur by August 20.

Ms. Jackson remarked that as a result, the Johnson County Election Board chose to use the Model 100 for the November 2004 general election, which allowed the County several weeks in advance to prepare for the County's election, rather than waiting and hoping that the iVotronic would be certified.

Ms. Jackson indicated that Johnson County did have some concerns with the iVotronic voting system when it was used in the primary, and there were some maintenance issues. She said that ES&S came into Johnson County and changed out a lithium battery, which was a week long process. She stated that during this period, ES&S informed Johnson County that the battery that was in the PEB, which is the electronic ballot, needed to be "woke up", as it was explained to the County. Ms. Jackson noted that as a result, the County has some concerns regarding maintenance issues, and what those issues are going to be in the future. She said that they would be planning to make a recommendation to the Johnson County Commissioners after January 1, 2005, after the County gets through the November 2004 election, as to where Johnson County stands with its iVotronic voting machines. Mr. Long joked to Ms. Jackson that she didn't want to be announcing that she have lithium batteries in all of these machines, or someone may be stealing the batteries.

The Chair commended Johnson County for doing the responsible thing and not waiting until the last minute, but instead taking the appropriate course to make certain that the County has certified voting equipment in place for the November 2004 election rather than being hamstrung through unforeseen circumstances.

In response to a question from Mr. Long, Ms. Jackson said that ES&S has honored Johnson County's request. She added that she in the last three weeks since John Groh has been on board with ES&S, Johnson County's relationship with ES&S has totally turned around. She said that ES&S has been extremely accommodating to Johnson County, and have honored all of the requests that Johnson County has made to them. Ms. Jackson stated that ES&S has agreed to foot the bill for Johnson County to use the Model 100s, and to help the County with the training. She added that ES&S will be printing 105% of the county's ballots to make certain that the county does not run out of ballots. She said that Johnson County is very pleased with the way that they have been treated by ES&S during the last three weeks.



The Chair recognized Sue Anne Lower, the Wayne County circuit court clerk. Ms. Lower said that she was accompanied to the meeting today by the president of her county's board of commissioners.

Ms. Lower stated that she too was very pleased with the way the iVotronics have worked in Wayne County. She said that she used them in the November 2003 city elections, including in Richmond, and they worked great. Ms. Lower remarked that several voters who had needed assistance to vote in the past were very pleased to be able to vote without assistance by using the iVotronics. She added that the County had used the Model 100s for all of its absentee voting, and this worked out remarkably well.

Ms. Lower said that the County was looking closely at the ES&S contingency plan, and that she was not certain at this point which way the County would be going. She said that she was confident whichever way it worked out, that Wayne County would be ready for the November 2004 election.

The Chair recognized Patricia French, the Henry County circuit court clerk. Ms. French said that she had developed a contingency plan for Henry County before ES&S did, and that this plan was for her County to use the Model 100s. She added that she was very confident, like Ms. Abell, that whether the Model 100s or the iVotronics were used, that Henry County would be ready to conduct this election. She said that she had been very pleased with using the direct record electronic voting systems, and would want to use that system if possible. Ms. French added that Mr. Groh was the best thing to ever happen to ES&S, and that things have changed dramatically. She remarked that the County's relationship with ES&S has greatly improved in terms of the county getting information from ES&S immediately and getting an immediate answer if the County has a question. She said that ES&S is very concerned and very caring like the company that she used to know, and now they are back on track. Ms. French stated that she was very glad that ES&S had recognized whatever it needed to recognize, and was now getting on down the road. She said that using the Model 100 or the iVotronic system is a "win-win" situation for the voter, and that the County will be ready for the election either way.

Mr. Long thanked all of the clerks for attending the Commission meeting.

The Chair said that it was clear to him that the persons in charge of the elections in these counties like the voting equipment, the equipment just has to be legal. He told Mr. Groh he added his appreciation of what he done since arriving in Indiana, and wished he would have been here sooner. He remarked that he was certain that his partners at ES&S probably agreed with that.

The Chair said, however, that the "proof was in the pudding", that ES&S has got to get these things done, and that ES&S has set an aggressive schedule for itself. He said that he sleeps better knowing that there is certified equipment, housed in Indiana, that will be sufficient to handle all of these counties in the form of the Model 100, if there is a hiccup or some other problem with version 9.0.0.0. The Chair said he took at face value the statements Mr. Groh had made regarding training and making sure that the training was in place. He added that the previous use of the Model 100 in several counties for absentee voting purposes was comforting.

The Chair noted that ES&S had proposed to him that the Commission conduct a hearing on September 22, 2004, and that he would like to set a Commission hearing date if possible during today's meeting. He said that ES&S would either hit or miss that date, so if ES&S is ready, great, but if ES&S is not ready, we will go with the Model 100 route.

Mr. Long stated that he had also appreciated the work of Mr. McGinnis for many years, as well as Mr. Groh. He added that that he had explained to local media that the Commission members

are not experts regarding the technical features of these voting systems. Mr. Long said that to get a better idea regarding these voting systems through the plan provided by ES&S was very commendable. He added that he wished Mr. Groh had been present at the last Commission meeting, which would have made that a shorter meeting.

Mr. Long said that the overall situation regarding the credibility of ES&S had made it very helpful for everyone on the Commission to accept Mr. Groh's sincerity. He said that the circuit court clerks were the ones out in the field, on the front line, and if ES&S has done its job, he would be happy to come up to certify the version 9.0.0.0.

#### **10. Next Commission Meeting Date**

The Chair recognized Mr. McClamroch, who said that if the Commission was willing to change the deadline, ES&S would request that this meeting be held as late as possible. He said that if the Commission's position was to set a meeting date, and the Commission has an ITA report by that date, then instead of September 22, ES&S would respectfully request as late a date as ES&S can get. Mr. McClamroch noted that ES&S had a deadline of October 1. The Chair noted that this deadline would get called on October 1.

Mr. McClamroch responded that the deadline would not get called on October 1, since ES&S would already have provided a replacement system. The Chair said that this was correct, that if ES&S did so, the deadline would not get called on October 1, but if ES&S failed to do so, the deadline would get called on October 1.

The Chair said that speaking for himself, he did not want to keep an entire week open for Commission meetings, which can be very lengthy. Mr. Long said that he was hoping that this meeting would be a very short meeting. Mr. McClamroch asked the Chair to note that proxies could also be named to attend a short Commission meeting. The Chair and Mr. Long said that yes, this was possible, but that they wished to attend this meeting.

Mr. Groh said that as soon as ES&S has knowledge regarding this situation, ES&S will be passing that knowledge on to the Commission. He said that the Commission would receive daily updates regarding the certification process, more than likely from the co-general counsels. He expressed the hope that if ES&S would ask for a Commission meeting to be called earlier, that the Commission would do so if it met with all of the Commission members' schedules.

Mr. Long then suggested that a Commission meeting be called for September 22, 2004 if everything works, and that a meeting also be called for September 28, 2004. The Chair responded that he would be happy to set two times for Commission meetings. Mr. Long said that if ES&S is ready to go on September 22, the Commission might as well certify the voting system so ES&S would have six additional days to putting the software in the machines legally.

The Chair then called a Commission meeting for 1:00 p.m. on September 22, 2004, and also called a Commission meeting for 1:00 p.m. on September 28, 2004, and asked election division staff to reserve rooms for the Commission, and that one of those meetings would be cancelled. Mr. Long stated that the Commission should know four or five days before September 22 if certification on that date would be realistic.

#### **11. Notice of NVRA Violation and Other Matters:**

Mr. Long said that Commission members had received in their meeting packet a communication from the co-directors regarding a complaint regarding a violation of the National Voter Registration Act. He asked if this was a matter that the Commission needed to take any action regarding or if this was a matter for the co-directors.

Ms. Robertson responded no, that at this point this matter was at the co-director level. She noted that Commission members had also been copied on a request from the co-directors to the Marion County board of voter registration office for information in response to the complaint received by the co-directors from the Marion County Democratic Party. She added that at this point, the co-directors have not received any communication back from the Marion County board of registration office. Copies of these documents are included by reference in these minutes.

Ms. Robertson said that the co-directors would copy the Commission members on any communication they have, but at this point the matter is still under investigation by the co-directors. Mr. King added that he would confirm what Ms. Robertson has said, and that it is correct.

The Chair said that one item he would like to have on the next Commission meeting's agenda would be a little tutorial for Commission members of no more than fifteen or twenty minutes regarding the training that has been given to the circuit court clerks regarding provisional ballots. He asked if the staff could walk Commission members through the provisional ballot process. He expressed his concern about provisional ballots not being counted because the required affidavits were not attached. The Chair said that all the Commission can do here is to make certain that we are getting the best training out in the field as possible.

Mr. Long asked if the Commission was involved in the special East Chicago election. Ms. Robertson responded no, that the role of the election division in this matter had been to answer questions. She noted that this special primary had been ordered by the court to be conducted on October 26, 2004.

## **12. Adjournment**

The Chair recognized Mr. Long, seconded by Mr. John, who moved that the Commission do now adjourn.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Becker, Mr. Burdick; Mr. John, and Mr. Long), no Commission member voting "no", the motion was adopted.

The meeting then adjourned at 5:32 p.m.

Respectfully submitted,

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J. Bradley King  
Co-Director

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Kristi Robertson  
Co-Director

Approved,

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Brian L. Burdick, Chair